United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,356

United States Court of Appeals
For the
District ... Circuit
FILED MAY 19 1958
Joseph W. Stewart
CLERK

WILLIAM L. PERRY,

Appellant,

v.

39

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Washington, D. C. ROBERT I. THIEL Printer EX 3-0625

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JOINT APPENDIX

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293 [Filed in Open Court March 4, 1957]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Holding a Criminal Term

Grand Jury Impanelled December 27, 1956, Sworn in January 2, 1957

The United States of America	)	Criminal No. 211-57
v.	)	Grand Jury No. 234-57
William L. Perry	)	Unauthorized Use of Vehicle (22 D. C. C. 2204)

The Grand Jury Charges:

On or about February 12, 1957, within the District of Columbia, William L. Perry feloniously did take, use, operate and remove the automobile truck of Empire Laundry, Inc., a body corporate, from a lot and did operate and drive said automobile truck for his own profit, use and purpose, without the consent of Empire Laundry, Inc., a body corporate, the owner of said automobile truck.

/s/ Oliver Gasch
Attorney of the United States in and for the District of Columbia

A TRUE BILL:

/s/ Daniel L. Harbour
Foreman.

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295 [Filed March 18, 1957]

ORDER

Upon consideration of defendant's motion for a mental examination to determine his ability to understand the nature of the proceedings against him, the statement of the Government that it does not object to defendant's motion, and it appearing that defendant may be presently of unsound mind or mentally incompetent to understand the nature of the proceedings against him or properly to assist in his own defense as defined in Title 24, Section 301, District of Columbia Code, 1951 Edition as amended August 9, 1955, as it is by the Court this 18th day of March, 1957,

ORDERED that the defendant be committed to the District of Columbia General Hospital for a period not to exceed sixty days to be examined by the psychiatric staff of said Hospital. The Chief Psychiatrist of said Hospital will upon completion of said examination file with this Court a written report of the examination, pursuant to Title 24, Section 301, District of Columbia Code, 1951 Edition, as amended August 9, 1955, which report shall express the opinion of the staff of the Hospital on the present sanity or mental competency of the defendant, and it is

FURTHER ORDERED that upon receipt by the Court of the report of the Chief Psychiatrist, the United States Marshal or his designated deputy is hereby authorized to bring the defendant before this Court for such further proceedings in this matter as may be necessary.

/s/ R. B. Keech
Judge

SEEN:

/s/ Joseph M. Hannon
Assistant United States Attorney

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296 [Filed May 8, 1957]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC HEALTH
DISTRICT OF COLUMBIA GENERAL HOSPITAL
19th AND E STREETS, SE.
WASHINGTON 3. D. C.

May 7, 1957

Mr. Harry M. Hull
Clerk, Criminal Division
U. S. District Court
For the District of Columbia
U. S. Courthouse
3rd and Constitution Avenue,
Washington, D. C.

Re: William L. Perry
DC 211-57

Dear Sir:

William L. Perry was admitted to District of Columbia General Hospital March 27, 1957, for Psychiatric Studies and evaluation.

Complete Psychological and Psychiatric Evaluation reveal him to have brittle control over his primitive emotions, with the future possibility of a mental illness.

At the present time however, he is sane, competent, and capable of participating in his own defense.

He may be returned to jail at any time.

Sincerely yours,

/s/ John D. Schultz, MD.

M. V. McI:lbj

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297 [Filed June 10, 1957]

ORDER

This cause having come on for trial this date and it appearing to the Court that the defendant was examined at the District of Columbia General Hospital and a report from the Chief Psychiatrist of that institution indicating that "Complete Psychological and Psychiatric Evaluation reveal him to have brittle control over his primitive emotions, with the future possibility of a mental illness" and because of the defendant's actions and statements when he appeared before the Court prior to trial and it appearing therefore, that the defendant may be presently of unsound mind or mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, it is by the Court this 10th day of June, 1957,

ORDERED, that the defendant be committed to Saint Elizabeths Hospital for a period not to exceed sixty (60) days to be examined by the psychiatric staff of said Hospital.

The Superintendent of said Hospital upon completion of said examination will file with this Court a written report of said examination pursuant to Title 24, Section 301, District of Columbia Code, 1951 Edition, as amended August 9, 1955, said report to express the opinion of the staff of said Hospital on the present mental competency of the accused to stand trial, and if possible his mental condition on February 12, 1957, the date of the alleged offense herein and it is,

298 FURTHER ORDERED, that upon receipt by this Court of the report of the said Superintendent, the United States Marshal or his designated deputy is hereby authorized to bring the defendant before this Court for such further proceedings as may be necessary.

/s/ Edward M. Curran
Judge

No Objections:

/s/ Harold H. Titus, Jr.
Assistant United States Attorney

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299 [Filed August 22, 1957]

DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE
SAINT ELIZABETHS HOSPITAL
WASHINGTON 20, D. C. 74,812

Re: William L. Perry
August 21, 1957

The Clerk
United States District Court
for the District of Columbia
United States Courthouse
Washington 1, D. C.

Dear Sir:

Mr. William L. Perry (Criminal Number 211-57) was committed to Saint Elizabeths Hospital July 1, 1957 for a period of not to exceed sixty days, upon an order signed by Judge Edward M. Curran, to be examined by the psychiatric staff of this hospital. It was further ordered that a written report of our findings be submitted to the Court as to the present mental competency of William L. Perry to stand trial and, if possible, his mental condition on February 12, 1957, the date of the alleged offense.

Mr. Perry's case has been studied intensively since the date of his admission to Saint Elizabeths Hospital and he has been examined by several qualified psychiatrists attached to the medical staff of Saint Elizabeths Hospital as to his mental condition. On August 20, 1957 Mr. Perry was examined and the case reviewed in detail at a medical staff conference. We conclude, as the result of our examinations and observation, that William

L. Perry is mentally competent to understand the proceedings against him and to properly assist in his own defense. We are unable, on the basis of available information, to express an opinion as to Mr. Perry's mental condition on February 12, 1957.

Sincerely yours,

/s/ Ann M. Duval, M. D.
Acting Superintendent

CC: United States Attorney
for the District of Columbia
Washington 1, D. C.

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300 [Filed August 30, 1957]

ORDER

It appearing to the Court that the defendant was committed to Saint Elizabeth's Hospital on July 1, 1957, to determine whether he was competent to stand trial and to assist counsel in his own defense, and it further appearing that the superintendent of Saint Elizabeth's Hospital certified on August 21, 1957, that the defendant is presently mentally competent to understand the proceedings against him and to properly assist in his own defense, it is by the Court this 30th day of August, 1957,

ORDERED that the United States Marshal, or his designated deputy, be authorized to bring William L. Perry from Saint Elizabeth's hospital to the District of Columbia Jail to await trial in this matter.

/s/ Edward M. Curran
Judge

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301 [Filed October 7, 1957]

On this 7th day of October, 1957 came again the parties aforesaid, in the manner as aforesaid, and the same jury as aforesaid in this cause, deliberation in which was respited Friday, October 4,1957; whereupon the jury upon their oath say that the defendant is guilty as charged.

The case is referred to the Probation Officer of the Court.

The defendant is remanded to the District Jail.

By direction of

James W. Morris
Presiding Judge
Criminal Court #Two

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302 [Filed November 12, 1957]

JUDGMENT AND COMMITMENT

On this 8th day of November, 1957, came the attorney for the government and the defendant appeared in person and by counsel, Joseph Zitomer, Esq.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of Unauthorized Use of Vehicle as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) year to Three (3) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Jas. W. Morris
United States District Judge

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303 [Filed November 22, 1957]

ORDER

Petition for leave to proceed in forma pauperis on appeal from the judgment of this Court having been filed by the defendant pro se, unaccompanied by a statement of whether a substantial question exists, it is this 20th day of November, 1957,

ORDERED That the matter be, and the same hereby is referred to Joseph Zitomer, Esquire, trial counsel, for a statement of whether a substantial question exists in the case, and, if so, for a specification of such substantial question, in accordance with local Criminal Rule 92-A, adopted by this Court November 13, 1957.

/s/ Jas. W. Morris
Judge

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304 [Filed December 16, 1957]

STATEMENT OF APPOINTED TRIAL COUNSEL

Comes now Joseph Zitomer, appointed trial counsel in the above entitled cause,pursuant to the order of this honorable Court of November 20, 1957, and states as follows:

That in the opinion of trial counsel for the defendant a substantial question exists in the cause for determination on appeal in that after the trial of the instant cause the U. S. Court of Appeals for this District in Wright v. U. S., decided October 30, 1957, ruled on a factual issue similar to the one presented at the trial of this cause that the evidence was insufficient to sustain the verdict of guilty.

Counsel's recollection of the evidence in the instant cause is that two government psychiatrists to whom this Court had referred the defendant for examination gave testimony; that one psychiatrist (the Chief of Psychiatry at D. C. General Hospital) testified that the defendant was presently suffering from a mental disease; that he was unable, as a result of his examination alone to state whether or not the crime alleged was the product of that mental disease but that in response to a hypothetical question embodying the evidence in the case he was of the opinion that the act was the result of such mental disease.

It is counsel's recollection that the other psychiatrist (associated with St. Elizabeth's Hospital) testified that the defendant was not presently suffering from a mental disease and that he was unable to state whether or not at the time of the commission of the crime alleged he was suffering from any mental disease and that a hypothetical question could not assist him in

reaching an opinion.

The psychiatrist who testified that the act was the product of mental illness or disease made his examination of the accused several months before the examination by the other psychiatrist.

305 In the Wright case, supra, there was testimony of government psychiatrists (or psychiatrist) expressing the opinion that the act charged was the product of mental illness or disease. Other psychiatrists (or psychiatrist) testified that they were unable to form any opinion on that issue. Our court of appeals held that the government had not sustained its burden of proof with respect to the issue of insanity; that a reasonable doubt of of the accused's sanity existed as a matter of law in view of the evidence; and reversed the jury's verdict.

Appointed trial counsel is therefore of the opinion that this honorable Court may have erred in denying the defendant's motion for judgment of acquittal made at the close of all of the evidence.

Respectfully submitted,

/s/ Joseph Zitomer

* * * *

Appointed Trial Counsel for Defendant.

[Certificate Of Service]

[Filed March 24, 1958]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 Washington, D. C.,

October 2, 1957.

The above-entitled action came on for trial on the merits, before the HONORABLE JAMES W. MORRIS, United States District Judge, and a Jury, at 2:30 o'clock p. m.

APPEARANCES:

On behalf of the United States:

JOSEPH HANNON
Assistant United States Attorney

On behalf of the Defendant:

JOSEPH ZITOMER, Esq.

* * * *

PROCEEDINGS

* * * *

MR. HANNON: There is a stipulation between the government and defense attorney that Empire Laundry, Inc., mentioned in the indictment in this case is a body corporate.

MR. ZITOMER: We so stipulate.

THE COURT: That being so stipulated, it will be taken as established in this case.

* * * *

HENRY C. ROBERTS

* * * *

DIRECT EXAMINATION

BY MR. HANNON:

* * * *

Q. Where are you employed? A. Empire Diaper-Linen Service, Inc., 4628 Minnesota Avenue, N. E.

Q. Is that also known as Empire Laundry, Incorporated? A. That is correct.

Q. In what capacity are you employed by Empire Laundry? A. I am a vice-president.

Q. And would you tell us where it is located? A. In Deanwood,

4628 Minnesota Avenue, N. E.

Q. Here in the District of Columbia? A. That is correct.

Q. Do you have a parking lot, sir, for your trucks? A. Yes, we do, right adjacent to the building.

Q. That would also be on Minnesota Avenue, N. E., the District of Columbia? A. That is correct.

Q. I direct your attention to the date February 12, 1957, at about 6:45 in the evening and ask you whether you can tell us where you were? A. Around the time, my brother, the engineer and I were in the office

and I noticed the truck backing out into Minnesota Avenue.

Q. What truck are you referring to? A. The truck that was stolen or removed from the lot, the No. 5 truck.

Q. Is it a 1956 Ford truck automobile? A. That is correct.

Q. Is it owned by the Empire Laundry, Inc. ? A. That is right.

Q. And that is the truck you are referring to? A. That is right.

Q. When you saw the truck backing out of the lot, what, if anything, did you do? A. Well, I had my flashlight in my hand, I was checking the windows, and I was in the office and I saw the truck moving and it was backing into Minnesota Avenue and he had already backed into Minnesota Avenue when I arrived at the door with my flashlight.

Q. What did you do with the flashlight? A. I spotted the flashlight on the driver's seat to see who it was.

Q. Were you able to see him, sir? A. Yes, I did.

Q. And did you know him? A. I didn't know him then.

Q. Was he an employee of the corporation? A. No.

Q. What, if anything, did you do at that time, sir? A. Well, I told my brother--

Q. Don't tell us anything that you told your brother, just tell us what, if anything, you did. A. All right. Well, we got in the car --

Q. You say "we", you mean you and your brother? A. That is correct.

Q. All right. A. My brother and I got in the car and we pursued the truck.

Q. All right. You got into another automobile? A. That is right.

Q. And you pursued the truck that you had seen coming out of the lot? A. That is right.

Q. Tell us where you pursued it? A. Well, the truck went up Minnesota Avenue into Browning and across Browning, 49th Street into 50th Street, and back to Nash, back into 48th Street, and we were all that time about three feet behind the truck trying to stop him or catch up with him or get in front of him.

Q. How fast was the truck traveling? A. Well, I guess about thirty miles an hour, because one time we had to slow at 49th Street, we

got about fifty feet in the rear of him because we had to stop at 49th Street to go across.

Q. Ultimately where did the truck go? A. Then it went into Chapel Oaks, in the 5300 block of Nash down in Chapel Oaks.

Q. Is that in Maryland? A. That is correct.

Q. Do you know what street it was on? A. Nash, dead end street on Nash.

Q. All right. Did you pursue it down Nash Street? A. Yes, I did.

Q. Tell us what happened after you got down on Nash Street? A.
11 Well, on Nash Street, it came to Nash Street and there was a dead end at the end of Nash and the truck came to a sudden stop and a person jumped out and I pursued him with my flashlight spotted on him and I caught him in the weeds.

Q. The person you caught, sir, was it the same person that jumped out and ran? A. That is correct.

Q. Do you see that person in court this afternoon? A. I do.

Q. Would you point him out, please? A. (Pointing)

Q. There are three men, which of the three? A. The one in the center.

MR. HANNON: May the record show he has identified the defendant.

BY MR. HANNON:

Q. Prior to this time, had you ever seen the defendant before? A. I had not.

Q. Did you at any time give him permission to take your truck? A. No, I didn't.

Q. After you apprehended him, what happened? A. After I apprehended him, I brought him back to the car and put him in the car and we had one of the citizens in that vicinity, I don't know who it was, to call
12 the Prince Georges County police.

Q. Did there come a time the police came? A. That is correct.

Q. When the police came, what happened? A. The police took over.

Q. And the police took him into custody? A. Yes.

Q. Do you know where they took the defendant? A. Took him to Seat Pleasant Police Station, Prince Georges County.

Q. Did you go with them? A. Yes, I went with them.

Q. When they got to Seat Pleasant, did they talk to the defendant? A. Yes, they did.

Q. Were you present? A. Not all the time.

Q. At the times you were present, tell us what, if anything, the defendant had to say about this? A. They asked the defendant what reason he had taking the car, the truck, and who was with him, and he said he was joy riding.

Q. He said he took it to go joy riding? In response to the other question, whether there was anyone with him, did he say anything to that?

13 A. He said there was two other persons with him.

Q. Did you at any time see anybody other than the defendant in the truck, sir? A. No, I did not.

Q. Was there any damage to the truck? A. On the right -- left rear, estimate about seventy-five or a hundred and some dollars worth of damage to the truck and about fifty dollars, sixty dollars damage to the car.

Q. The car that you were chasing him with? A. That is correct.

MR. HANNON: That is all the questions I have.

CROSS-EXAMINATION

BY MR. ZITOMER:

Q. Who else was present with you at your place of business, before the car was taken? A. The engineer and my brother.

Q. Where were they located within the place of business? A. My brother was sitting at the desk, his back to the window; the engineer was checking the recorders on the truck.

Q. What was the lighting condition, was it daylight? A. The floodlights were on.

Q. The floodlights were on the place? A. That is correct.

Q. It was, then, nighttime? A. Yes, it was around 7 o'clock, it

14 was pretty near dark.

Q. Were the lights on inside the building where you were? A. That is correct.

Q. How many vehicles do you have on the lot? A. Five.

Q. The lot adjoins the building? A. There are five.

Q. How large was the building? A. It is about 100 feet wide by 150 or 200 feet long, an estimate.

Q. You were there in the main office? A. That is correct.

Q. Was your office visible from the parking lot? A. That is right.

Q. And were you in a position to be seen from outside the building? A. If a person got in the truck and see me.

Q. If a person who got in the truck, if they looked in your direction, could they have seen you? A. That is correct.

Q. Was the light in your office bright; was it a brightly lighted office? A. Yes, it is.

Q. When did you first notice that the car was being molested?

15 A. Well, I guess about three seconds after I come to my wits that someone was taking the truck or not, I saw it moving.

Q. You saw it moving? A. I saw it moving.

Q. Did you see the truck move out of its parked position? A. That is correct, I saw it moved from its parked position.

Q. So when the car was parked, you could see the car where it was parked? A. That is right.

Q. How far had the car moved before you first noticed it? A. Well, the truck usually is parked right by the window, I can look right out the office into the seat of the truck.

Q. Was that where it was parked? A. That is when I saw it moving, when the person turned on the ignition key and moved it, I saw it moving.

Q. Was that the truck closest to your office or farthest from your office? A. That is the truck I usually take home, it is closest to the office.

Q. Do you keep the keys to the truck in the truck? A. No, I do not. I had just gassed the truck and I was getting ready to close up.

16 Q. Do you know how the truck was started, were keys necessary to start the truck? A. That is right.

Q. Do you know whether or not this person had the keys to the truck? A. He did not.

Q. Do you know how the truck was started? A. With the key. I left the key in the truck to come in, to go home.

Q. The key was in the truck? A. That is right.

Q. Is it customary to leave the key in the truck? A. No, it is not customary, no.

Q. Do you normally leave the key in any other truck? A. No, I do not, no.

Q. So it would be entirely unexpected that your key was left in the truck -- I will withdraw that question.

As I understand it, then, you do not usually leave your key in the truck or in any other truck on the lot? A. At no time.

Q. And are most of the trucks secured at all times? A. They are locked at all times.

Q. Did you see anybody in the parking lot before the truck began to move? A. No, I did not.

17 Q. Can you describe the truck; can you describe for us the truck, the size of the truck? A. It is a ton truck Ford panel, panel body.

Q. Was it a typical laundry truck? A. Typical laundry truck only large, with Empire Diaper Linen Service on the side, bright red.

Q. When you left the truck, was the motor running? A. No, it wasn't.

Q. Were the lights of the truck on? A. No.

Q. Did you see anyone in or about the lot before you went into the building? A. No.

Q. When you proceeded to follow the truck, did you ever see anyone in or about the truck from the time you first saw the truck moved until the time you apprehended this man? A. No, I didn't. The same person I saw at the driver's seat is the same person I caught.

Q. Did you see anybody else in the front seat beside the driver? In the front seat of the truck? A. No, no.

Q. Then there was no person at all to be seen, no sign of any other person? A. That is right, no sign of any other person.

Q. Now, did you make any attempt to stop the truck while you

18 followed it? A. That is correct.

Q. What attempts did you make? A. I tried to get on the side of the truck to tell the person to stop or slow down, or to see who the person really was driving the truck.

Q. Were you able to do that? A. No, that is when we were sideswiped, we were pushed off the side of the road.

Q. Did you blow your horn? A. Yes, we were blowing our horn all the time.

Q. Now, when the truck came to a stop, you then got out of your car and you went to the cab? A. I jumped out of the car; when the truck stopped, I jumped out of the car. First, the truck hit a post, knocked a lady's post down in the yard and came to a sudden stop and I jumped out the car, chased him in the weeds and his shoes came off in a clay mud puddle, and that is when he fell and I jumped on him.

Q. So that after he came out of the cab; he came running out of the cab, in other words, you didn't go in the cab for him? A. No, no; I didn't go for him.

Q. Now, immediately upon apprehending him under those circumstances, did he say anything to you? A. Yes, he called me all kinds of

19 names, I can't repeat them all.

Q. And did he say anything; did he say anything to you about why he had taken the automobile? A. He didn't say right there and then, not to us, but in Prince Georges County Police Station he made a remark that he was joy riding.

Q. Do you recall what he was wearing on that date? A. I think it was a leather jacket, a brown leather jacket, I am not positive, some sort of a jacket; Army socks; I don't know the shoes.

Q. Did he put up any resistance to the two of you? A. Yes.

Q. How much resistance did he put up? A. He threatened us with ju jutsu and tried to beat both of us.

Q. Was he successful? A. No.

Q. Did it take very much force to overcome him? A. No, not too much.

Q. Did there come a time when he did quiet down, become more docile or more cooperative? A. He never quieted down until the Prince Georges County police came.

Q. He did quiet down when they arrived? A. Yes, they took him over.

Q. How long was it before the police arrived? A. I estimate about fifteen minutes, twenty minutes, somewhere in that vicinity.

Q. Was there anything unusual about his condition at the time you apprehended him? A. No, not as I know.

Q. Was there anything unusual in his appearance? A. No.

Q. Anything unusual in his speech? A. No.

Q. Or in his dress? A. No.

Q. Or in his manner toward you?

THE COURT: What was that question?

MR. ZITOMER: My question was whether there was anything unusual about his manner toward the witness.

THE WITNESS: No. I don't know why he was calling all those bad names, that is the only reason I know, I was wondering about that.

BY MR. ZITOMER:

Q. Did you pursue the subject of the two other men with him, when he mentioned that there were two other men with him, did you question him about that? A. I didn't see anyone.

Q. When he said that, did you say anything to him about it or say there were no other men or make a reply to that? A. I didn't see any use, because I didn't see anyone jump out the truck because we were so close behind him.

Q. When did he tell you there were two other men with him?

A. He made the statement at the Prince Georges County Police Station.

Q. He made that at the police station? A. Yes. He didn't make it toward us.

Q. Were you there? A. I was in the vicinity.

Q. You heard him say it? A. I heard him mention it.

Q. Do you know who the statement was made to? A. No.

Q. It was none of the persons here in court today? A. One of the officers was there.

Q. Was the statement made in the presence of any of the witnesses who are here today, besides yourself? A. Yes.

Q. Who were the witnesses who heard the statement? A. The policeman from Prince Georges County.

Q. The one with the red tie? A. Yes.

22 Q. Now, did the officer then question him further? A. Yes, they questioned him.

Q. What was his answer, what did he respond to those questions? A. They asked Mr. Perry if he had ever stolen a car or any vehicle before. He said no, and then they asked him why did he steal this truck this particular time and he said for joy riding.

Q. Was there any other conversation that you heard? A. Well, I was to the other side of the room; they carried on a conversation with him also, but I didn't hear all of it.

Q. That was all your heard? A. That is correct.

Q. And did you see him again thereafter, did you see the defendant again thereafter? Did you see him again after that? A. No, only when we came back to court.

Q. So after the conversation at Prince Georges, you left the station? A. I didn't see him any more.

Q. You didn't see or hear any more from him? A. No.

Q. Until this day? A. Not until this day.

Q. Until when? A. We came to court a couple times before.

23 Q. You saw him in court? A. That is correct.

Q. You had no conversation with him? A. No, no conversation with Mr. Perry,no.

Q. What was the color of the truck? A. Bright red.

MR. ZITOMER: That is all I have.

REDIRECT EXAMINATION

BY MR. HANNON:

Q. Mr. Roberts, you told us, sir, that prior to the time you observed the truck moving out of the parking lot, that you were checking

windows? A. Recorders, I was checking recorders and the windows; we were getting ready to close up and go home.

Q. How long had you been in that particular office where you were, prior to the time you saw the truck moving? A. I guess about five minutes, something like that. I don't know off-hand, the thing happened so suddenly I don't know off-hand.

* * * *

EDWARD ROBERT GRYSZKIEWICZ

called as a witness by the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

BY MR. HANNON:

Q. You, sir, are a member of the Prince Georges County Police Department? A. Yes, sir.

Q. Were you a member of that department, sir, on February 12, 1957? A. I was.

Q. On that date, sometime in the evening, did you have occasion to respond to the vicinity of Nash Street in Chapel Oaks, Maryland? A. I did.

Q. Tell us what you observed when you arrived there. A. When I arrived, I seen Mr. Roberts at the dead end of Nash Street standing alongside of his personal vehicle, passenger vehicle. He explained to me that he had apprehended the subject, later identified as Mr. Perry, stated he had him in the back seat of his automobile and proceeded to tell me--

Q. If you will, don't tell us -- Well, the defendant was in the back seat of the automobile? A. That is right.

Q. Did he hear this conversation you were having with Mr. Roberts? A. He was within hearing distance, yes, sir.

Q. All right. Then Mr. Roberts told you, sir, what? What was it Mr. Roberts told you? A. He told me he observed the subject taking the truck from the rear of his laundry, the Empire Laundry, and pursued

him from that location to the end of Nash Street and held him for our arrival.

Q. And then, sir, did you place the man under arrest? A. I did.

Q. And do you see him here this afternoon? A. Yes, I do.

Q. Where is he? A. Seated in the center of the three gentlemen sitting to the right.

MR. HANNON: Let the record show this officer has identified the defendant.

BY MR. HANNON:

Q. After you placed him under arrest, Officer, what did you do? A. I transported him to Seat Pleasant Station, 410 Anderson Road, and also notified the dispatcher to contact the Metropolitan Police for their arrival at Seat Pleasant Station.

Q. When you had the defendant at the Seat Pleasant Station, did you talk to him, sir? A. I don't remember any conversation with this gentleman. The only -- the conversation I overheard and I am not certain word for word what was said, I didn't interrogate the subject, myself.

Q. All right. He was interrogated but you didn't hear the interrogation? A. That is right, sir.

Q. Now, sir, did he execute a waiver of extradiction? A. Yes, he did.

Q. And was he turned over to the Metropolitan Police Department for the District of Columbia? A. He was.

Q. And do you remember the names of the officers that he was turned over to? A. Officer Rabe and Officer Drass.

Q. The two police officers that stood to be identified earlier as witnesses? A. That is correct.

Q. Did they take him from the Seat Pleasant Station? A. Yes, they did.

MR. HANNON: Thank you. That is all.

CROSS-EXAMINATION

BY MR. ZITOMER:

Q. Officer, did you take the defendant to Seat Pleasant Station by yourself? A. Yes, I did.

Q. Did he say anything to you on the way back to the station? In the automobile? A. He was very quite, he did not speak with me, no.

Q. What was his condition, as nearly as you could determine, at that time in the automobile with you? A. He was cooperative; however,

28 I did smell alcohol while he was near me.

Q. Was there anything about his condition that you noticed? A. No, except that he was very quiet.

* * * *

Q. And did he sign the waiver authorizing you to return him to the District of Columbia at that time? A. Yes, he did, at the station.

* * * *

29 Q. Who returned him to the District of Columbia Police? Who returned the accused to the District? A. Two officers in the courtroom, Metropolitan officers, Officers Rabe and Drass.

Q. They came out to get him? A. That is right.

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* * * *

30 REDIRECT EXAMINATION

BY MR. HANNON:

Q. Officer, how long have you been a police officer? A. Pardon?

Q. How long have you been a police officer? A. Six years.

Q. And have you made many or few arrests for intoxication? A. I would say above average.

Q. And are you in a position, sir, to tell us whether, at the time you took the defendant into custody, he was intoxicated? A. Yes.

Q. He was intoxicated? Excuse me, let me ask you this: Would you state whether or not he was intoxicated? A. No, I would say he was normal except for the smell of liquor, alcohol, about his breath.

* * * *

31 ROBERT L. RABE

called as a witness by the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANNON:

Q. Officer Rabe, tell us your name, position and assignment?

A. Private Robert L. Rabe, assigned to No. 14 Precinct.

Q. Were you so assigned last February 12, 1957? A. Yes, sir.

Q. And on that date, did you have occasion to go to Suitland, Maryland? A. Seat Pleasant, yes, sir.

* * * *

Q. What time was it, sir? A. That was approximately 7:15 p. m.

Q. And when you arrived there, what if anything did you do? A.

32 When we arrived there, we were told by Officer Bishop and Mr. Roberts the facts leading up to the arrest of Mr. Perry. And at that time, I asked him several questions why he had taken the truck and what he had done.

Q. This was at Seat Pleasant? A. That is correct.

Q. When you asked him why he had taken the truck, did he answer? A. He did, sir.

Q. What did he say? A. He said he went for a joyride.

Q. What else did you ask him, if anything? A. Well, we had asked him where he had been previous and how he had come to come up to the vicinity where he had taken the truck from, and he had told us that he had been over at Kenilworth and Eastern Avenue and was going home through that way and had seen the truck there and decided to take it.

Q. Are you familiar with that area? A. I am, sir.

Q. Do you know where he said he lived? A. I don't remember where he said he lived.

Q. If I said 4046 Gulf Place, N. E., would that refresh your recollection? A. 46th and Gulf, yes, I think that is what he did say.

33 Q. Is that correct? A. Yes, sir.

Q. Are you familiar with the area of the Empire Laundry, sir? A. Yes, sir.

Q. Now, to go from where he told you he had been, to his home at Gulf Place, N. E., would the Empire Laundry be en route? A. No, sir.

Q. What else did he say? A. Well, during the time I was talking to him, he stated there were other men in the truck and I asked him how many and where they were, and he told me there were two other men in

the truck but they had jumped out during the chase. And I asked him their names, could he tell us who they were. He couldn't tell us, he didn't know their names, where they lived or anything.

Q. Did he tell you he didn't know their names? A. That is right.

Q. Did you then take him to the District of Columbia? A. We did.

Q. Had he executed, to your knowledge, a waiver of extradiction? A. Yes, sir, he signed it in my presence.

Q. At the time that he signed it, did anybody explain to him what
34 he was signing? A. Yes, sir. I had asked him prior to that if he would come back to the District of Columbia and would he want to waive jurisdiction.

Q. A waiver of extradition is what, sir? A. That is right.

Q. What is a waiver of extradition? A. Well, he would come back voluntarily to the District of Columbia to face the charge of unauthorized use.

Q. And you explained that to him? A. Yes, sir.

Q. And at that time he signed it and went back with you? A. He did, sir.

Q. After you came back into the District of Columbia, where did you take him? A. Took him into No. 14 Precinct.

Q. Was he questioned at No. 14, sir? A. He was, sir.

Q. What questions were asked of him there? A. About the same that was asked over at Seat Pleasant, who was with him and why he had taken the truck.

Q. Were his answers different at No. 14 Precinct than what he had given at Seat Pleasant? A. No, sir.

35 Q. Now, did you have occasion to observe the defendant, himself? A. I did, sir.

Q. Was there anything unusual about his appearance? A. Nothing unusual other than the odor of alcohol on his breath.

Q. Now, Officer Rabe, how long have you been a police officer? A. Approximately seven years.

Q. And have you made many or few arrests for intoxication, sir? A. Many, sir.

Q. And are you, sir, in a position to tell us whether the defendant was intoxicated at the time that you took him into custody? A. Yes.

Q. Would you state whether or not he was? A. He was not intoxicated.

MR. HANNON: Thank you. You may inquire.

CROSS-EXAMINATION

BY MR. ZITOMER:

Q. Officer, do I understand that you asked him at Seat Pleasant why he took the automobile? A. That is right.

Q. And he answered the question? A. He did.

36 Q. And did you again ask him at No. 14? A. That is right.

Q. And he again answered that question? A. That is right.

Q. How many times did you ask him that question? A. I asked him at Seat Pleasant and at No. 14.

Q. Did you ask him at any other time? A. Only those two times.

Q. Then did you get an answer to your first question? The first time you answered, I understand you did get an answer to the first question, that he was taking it to go joyriding? A. That is right.

Q. Then you had reason to doubt his answer to the first question? A. No, sir, I had no reason to doubt him.

Q. Then why did you ask him a second time? A. For my statement of facts at the precinct.

Q. Then you had forgotten what he said on the first occasion? A. No, sir.

Q. Were there any other questions which you asked him at the Seat Pleasant Station? A. Only as to what he told me, that there were two other men in the truck.

37 Q. He did tell you there were two other men in the truck? A. He did.

Q. Did you ask him who they were? A. I did.

Q. What did he say? A. Said he didn't know their names or where they lived.

Q. Did he tell you what they looked like? A. No, sir.

Q. Did he tell you why the other two men were in the truck with him? A. No, he didn't.

Q. Did he offer any explanation or attempt to palm off responsibility on these two men? A. No, sir, he did not.

Q. So far as you can see, then, there was no apparent reason for his suggesting that two other men were with him? A. No.

Q. Did he attempt to excuse his use of the car or seek to avoid responsibility for the use of the car at that time? A. I didn't get that.

Q. Did he come up with an alibi or excuse or explanation other than joyriding? A. No, sir.

Q. Was he generally cooperative in response to your questions?

38 A. He was, sir.

Q. Did he appear to answer the questions quickly or with hesitancy? A. He answered them quite quickly.

Q. How long a time did you interrogate him? A. Oh, we were at Seat Pleasant, I guess, a period of about half an hour talking to Mr. Roberts and the other officers and signing the waiver of extradition.

Q. Officer, I understand you had considerable experience in intoxication, persons being intoxicated? A. Yes, sir.

Q. He was not under the influence of alcohol? A. No, sir.

Q. Have you had any particular training in the field of psychiatry? A. No, sir.

* * * *

39 MR. HANNON: The government rests.

* * * *

41 DR. WILLIAM G. CUSHARD

called as a witness by the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ZITOMER:

Q. Doctor, will you tell the court and ladies and gentlemen of the jury, your full name and your place of employment? A. William G.

Cushard, physician specializing in psychiatry, on the staff of St. Elizabeth's Hospital, Washington, D.C., and in the private practice of psychiatry in Montgomery County, Maryland.

MR. HANNON: I will stipulate to Dr. Cushard's expertness as a qualified, very capable psychiatrist.

THE COURT: All right.

BY MR. ZITOMER:

Q. As I understand, you are connected with the District of Columbia Government? A. No, sir.

Q. Well, did you have occasion to examine the defendant in this case, William L. Perry? A. I did.

Q. Was that examination made at the request of the Court? A. It was made at St. Elizabeth's Hospital, to which the patient had been com-

42 mitted for a period of observation and determination of his condition.

Q. And in what manner were you selected as the psysician to examine the patient? A. He was admitted, in view of the fact that he was under charges, to the maximum security division, which is a part of the West Side Service, of which I am in charge.

Q. That decision was made by the Superintendent of St. Elizabeth's Hospital or by one of his representatives? A. Well, the policy of admitting patients who are under charges is determined actually, in the final analysis, by the Superintendent, but all patients under charges, practically, are admitted to the maximum security division.

Q. Doctor, you are in charge of the maximum security division and were so at the time? A. Yes, sir.

Q. What is the procedure followed in the case of William L. Perry? What I mean by that is, what type of observation and treatment or examination was given him? A. Well, he was admitted to the hospital on July 1st for a period of observation not to exceed sixty days, and determination of his mental condition. He was interviewed, examined by one physician at the time of his admission, that is a mental examination and a physical examination. Subsequent to that, he was interviewed by me and other physicians attached to the staff of the West Side Service at St.

43 Elizabeth's Hospital. He was under 24-hour observation by trained supervisors, registered nurses and attendants at St. Elizabeth's Hospital during the time of his residence there.

He was given psychological testing by a clinical psychologist, who is a member of the staff of St. Elizabeth's Hospital.

The records were subpoenaed, Your Honor, if I might refer to them.

THE COURT: Yes.

THE WITNESS: He was also given electroencephalogram, perhaps I should explain what that is. In order to rule out the possibility of organic damage to the central nervous system, the brain in this case, and particularly because this was an alleged history of what he described as blackouts, two or three blackouts or loss of memory for certain events, we had this electroencephalogram done. In the brain there are very minute electric currents which take place from one part of the brain to the other, even when we are asleep but more so when we are awake and during active thinking processes. Of course, these are extremely minute currents, but with a very sensitive measuring instrument known as a valvonometer, the current exchange within the brain can be measured and a tracing made. The tracing is known as an electroencephalogram. The principal reason for doing that, as I mentioned, is to determine whether or not there is actual organic damage to the brain.

44 Now, in this case the electroencephalogram was normal, no evidence of organic damage to the brain.

BY MR. ZITOMER:

Q. May I interrupt you. Will you explain what you mean by organic damage as opposed to any other type of damage? A. Well, organic damage may be caused in various ways; in other words, a person may have a disease of the brain, various types of diseases, ensyphilitis or syphilis or various things of that kind, and this may cause damage which is irreversible, in other words, from which the individual cannot entirely recover; in other words, that is permanent damage. It may also result from a severe head injury, that is, a severe blow on the head which causes damage which remains and is permanent, and there are certain other conditions like illuminating gas and such things as that, which may

cause permanent damage. So it may be due to disease, toxic agents or injury, trauma.

Q. You have to forgive this question, but is there such a thing as damage which is not organic? A. I don't see that one actually would refer to damage unless it is organic. In other words, if there is damage to the brain, the inference is that it is a physical or organic damage.

Q. Is it possible, then, that a person can have a defect of the brain
45 which could not be the result of organic damage? A. Oh, yes, we have quite a few individuals in the population who are mentally defective from birth, in other words, it is a congenital mental deficiency, but that is a little different from damage; I mean, they are defective, but it is a congenital thing and not the result of damage to the brain. In other words, the brain has never developed normally.

Q. What I am driving at by this question is this, the electroencephalogram will show when there is organic damage or organic -- A. Or physical damage, we might say, to the brain.

Q. Physical abnormality to the brain, but would it show if there is other abnormality to the brain which is not physical? A. It would not show a functional disturbance of the brain. In other words, a person might have a mental illness of a functional nature that is not organic, and the electroencephalogram would not show any changes if it was a functional mental disorder; it isn't used in connection with diagnosis of functional disorders.

Q. Functional disorders, are we referring to psychoses? A. We are referring to things in which there is no demonstrable organic or physical cause for the mental disease.

Q. And is that what we refer to as psychological defect? A. Well, I suppose one could refer to it as psychological or psychogenic, I mean
46 the semantics of the thing can vary from person to person. I think the easiest way to make clear what functional means, it means the absence of any demonstrable organic cause for the disease.

Q. In other words, it is physically normal, apparently, but it doesn't function properly? A. That is correct and I might add that in a disorder of that type, even in an autopsy one does not find changes in the

brain.

Q. Now, the result then of the electroencephalogram shows there was no physical injury or abnormality to the brain? A. No physical or organic damage to the brain, that is correct.

Q. Was that conclusive with respect to that point? A. It was negative -- I am sorry, strike that, please, normal, not negative, but normal, and that indicates that there was not organic damage to the brain. Now, I don't mean to say that any test is 100% perfect, but there was nothing on the electroencephalogram to indicate any organic damage.

Q. What other tests were given him? A. Well, we also do certain tests more or less routinely, such as examination of urine, examination of lungs, and examination of the blood to determine whether the individual has any venereal disease, that was negative; the other x-ray examinations were negative, x-rays of the chest, and the examination of the blood was
47 negative, urinalysis was negative.

I mentioned, I believe, these clinical psychological examinations.

Q. Doctor, in determining whether or not a man has a mental disorder or mental defect, you take a case history of the patient? A. Oh, yes.

Q. What source of information do you use for your case history? A. Well, of course, the sources of information vary with the individual case. Naturally, we get information from the patient, as complete as possible, of his entire life history and then we endeavor to get information from any other sources that are available which would be of assistance in coming to a determination.

Q. Was a case history made in this particular instance? A. Yes, there was an initial examination which was a psychiatric examination and a physical examination was done on the date of his admission, July 1, 1957; the case study, the detailed history and mental examination for the record was made on August 9, 1957.

Q. Now, this case history was verified through other sources? In other words, was there a discussion with the boy's mother? A. There is quite a bit of information in here, we got information from the Surgeon
48 General of the Navy, we received information from D.C. General Hospital as to the examinations which were done at D.C. General Hospital,

information from the Enlisted Services and Records Division of the Navy, information from the United States Attorney, and information regarding the past criminal record.

* * * *

Q. Doctor, was an opinion formed by any person in the hospital, any qualified physician in the hospital, with respect to his mental competence or mental defects, if any, existing at the time of the examination? A. Yes.

Q. Who were the doctor or doctors who were able to form such an opinion? A. Dr. Tortelina, myself, Dr. Cody, Dr. Platkin, Dr. Owens, Dr. Friedman.

49 Q. And can you tell in what manner those opinions were arrived at? A. In the usual manner, that is, at the time this patient was presented before a medical staff conference which was on August 20, 1957, in all cases after the case is thoroughly worked up and all possible information is in the record, the examinations have been done, the patient is presented before a medical staff conference attended by the psychiatrist and also present is usually a clinical psychologist. I might say there was also a clinical psychologist, Dr. Zax, present at this conference, and sometimes the social worker who is assigned to the case will be present because there are social service problems that come up.

At this conference, a determination is reached as to the individual, at least as to our opinion, as to his mental competency and diagnosis.

* * * *

50 Q. Were you able, you personally, to form an opinion as to the mental condition of this man? A. I formed an opinion and also concurred in the opinion which was made at the conference, which was reached at the conference.

Q. Will you tell us what that opinion is?

MR. HANNON: Which opinion? There were two, the doctor said the staff opinion and his own.

THE COURT: I thought he said he concurred in the staff opinion.

THE WITNESS: That is correct, Your Honor; that the patient was

able to understand the nature of the charges against him and to participate properly with counsel in his own defense.

BY MR. ZITOMER:

Q. That opinion was in response to the legal question, wasn't it? A. That was in direct response to the court order which required that that statement be made, yes.

Q. What was your opinion with respect to his mental condition, generally? A. That he is without mental disorder.

Q. Could you find any mental defect whatsoever in the patient?

51 A. No, sir.

Q. You mean to say, then, that the patient is normal? A. I would have to ask you to define the word normal, normal doesn't mean a great deal to me. Perhaps if you could tell me what you mean by normal, I would be glad to try to answer.

Q. Did you find any mental disorder whatsoever? A. No, sir.

Q. Did you find any mental defect whatsoever? A. No, sir.

Q. Was a report rendered to the court, a written report made to the court as a result of the examination? A. There was, yes, sir.

Q. And you have a copy with you? A. I do, a carbon copy, I have it here.

Q. Now, was there indicated -- before we get to the report, were you able to form an opinion as to what his mental condition was at the time of the alleged offense? A. That, if I recall correctly, was February 12, 1957, I believe that is correct.

Q. Yes, sir. A. Of course, we didn't actually see this man, I would like to bring out, until the 1st of July, 1957, which was about five months subsequent to the time of the commission of the crime. I would

52 only want to go so far as to say that we found no evidence, nothing to indicate that Mr. Perry was suffering from mental disease or mental defect on February 12, 1957, but not having seen him at that time, for several months thereafter, I could not categorically state that he was not suffering from a mental disease at that time; it would be very difficult to state anyone was not suffering from mental disease five months

before one saw him, to definitely rule it out.

Q. Did your examination indicate to you that he had at any time suffered any mental defect? A. Mental defect?

Q. Yes. A. No, there was no evidence he had suffered from any mental defect at any time, the psychological examination ruled that out.

Q. You said mental defect? A. We found neither mental disease nor mental defect.

Q. Did you find any mental abnormality? A. Again, the word normal and abnormal is something that is subject to so many interpretations. Could I just say that I think normal, in the common usage, is more or less average, deviation is from average, but the word normal, I believe, is a sort of theoretical thing as anyone absolutely normal, in other words; but I do not feel that he was suffering from mental disease
53 or deviated markedly from the average, if we can use normal in that sense.

Q. Did you find, as a result of your examination of the man, that he had at any time suffered periods of amnesia? A. The patient stated that he had suffered from amnesia on three occasions when taking automobiles.

Q. What was that, sir? A. When taking automobiles.

Q. Had he suffered amnesia at any other time? A. May I refer to the record?

Q. Yes, sir. A. I think it was only three times, if I recall correctly. He said he had had three blackouts, is what he called them, and he stated that the first one followed an ammunition explosion when he was stationed at Okinawa in 1945, the other two happened after his return to the States, and I know that one of the other two referred to the present episode because he stated that he could not remember the offense with which he is presently charged. The third one, I am not sure about, but he mentioned three.

Q. Doctor, do you mind if I take a look at your records? A. If the Court so directs.

THE COURT: I so direct. You say they were subpoenaed?

THE WITNESS: Yes, sir, I have the subpoena.

BY MR. ZITOMER:

54 Q. Are these all the records in the case? A. This is the correspondence file, contains the report to the court.

* * * *

56 (Adjourned at 4:10 p.m. until tomorrow, October 3, 1957, at 10 o'clock a.m.)

* * * *

59 Q. Doctor, I understand that he gave a history of blackouts? A. Yes, he did.

Q. Or episodes of amnesia? A. He did.

Q. And do I take it, then, that you did not believe the amnesias were, in fact, genuine? A. That was our unanimous opinion and it was based on the fact that an amnesia does not usually exist, in fact I would say it practically never exists in the absence of some other symptoms of mental illness, unless it is caused by a toxic agent such as alcohol. If a person drinks too much, who is otherwise relatively normal, he may be unable to remember what he did at a certain time; but in the absence of some toxic such as alcohol, an amnesia exists in the presence of some other mental disease, for example, of a psychoneurosis, psychosis such as schizophrenia, or epilepsy or something of that kind, true am-

60 nesias do exist in those conditions. But here we have an amnesia with no other evidence of mental disease; in other words, in a sense existing in a vacuum.

Q. Has that been unheard of in medicine? A. I do not know of any cases of amnesia which were true amnesias, which exist completely in the absence of any other symptoms of mental illness or in the absence of a toxicant such as alcohol or narcotics or something of that kind.

Q. You came to the conclusion there were no other symptoms of mental illness? A. That was the result of our findings, both the clinical findings and the psychological findings.

Q. Was the amnesia itself a symptom of mental illness? A. An amnesia can be a symptom of mental illness, as I mentioned, but I can't

conceive of an amnesia existing in the absence of any other symptoms.

Q. Now, how do you determine whether or not other symptoms other than amnesia exist in a particular case? A. By clinical examination, by observation, by the various other examinations which I have already mentioned.

Q. I understand, then, that aside from the electroencephalogram, there is a history of the case taken? A. There is what?

Q. There is a history taken of the case? A. Oh, yes, yes.

61 Q. Was there anything in the history of the case that suggested the possibility of mental illness? A. No, I can't say that there was.

Q. There was in the history of the case episodes of amnesia in the past? A. The patient himself stated that he had had periods of amnesia, yes.

Q. Were you able to confirm that from any other source? A. I don't know how one would confirm an amnesia from another source, unless he had been examined by a competent psychiatrist at the time. I mean the fact that he had told someone else that he had amnesia and the third person told us, still would not be confirmation; there would have to be some medical evidence that it did exist at the time it was alleged to exist.

Q. I don't mean with respect to this particular episode, but were you able to determine from the past history whether or not, at some prior time, he had ever had amnesia when there was no apparent reason for his malingering? A. That is what I was referring to, that I have no medical evidence. I should say we have no medical evidence that he did actually suffer from an amnesia, either at this time or during the previous occasions which he mentioned. We have only his statement.

Q. Did you discuss this with the boy's mother? A. I don't recall

62 discussing it personally with the boy's mother, no. But even if his mother told me he had amnesia, which I don't believe she did, but even had she, that still would not change my opinion.

Q. You mean if the mother had said that the boy had amnesia or had an episode of amnesia last January? A. That would still be her statement, yes.

Q. And that there were no criminal charges, nothing wrong had occurred on that particular occasion, and assuming that the mother were telling the truth when she made that statement --

THE COURT: Wait just a minute. You can ask him what effect on his judgment the statement would have made, but when you say assuming she was telling the truth, that begs the question because that is what he is trying to determine.

MR. ZITOMER: What I meant, Your Honor, was assuming that the mother was relating accurately.

THE COURT: That is what the doctor doesn't know.

THE WITNESS: She might be accurately relating her opinion, but I wouldn't feel she was competent to make a decision as to whether he had an amnesia or not.

THE COURT: That is my understanding of your statement.

BY MR. ZITOMER:

Q. In other words, you feel the mother would be not competent to determine whether or not he had an amnesia at any time in the past? A. I
63 don't see how she could be considered as competent because she isn't qualified to determine an amnesia. The determination of the presence or absence of an amnesia is an extremely difficult thing.

Q. Then you think that any layman would find it impossible to determine whether or not any other person, regardless of how closely associated they were -- A. Well, I always dislike to use the word impossible, I find it difficult to conceive most anything is impossible, I would say highly improbable.

Q. You would believe that, even though there appeared to be no motive for the appearances of the amnesia at the particular time? A. Well, of course, the question as to whether there appeared to be any motive for an amnesia at a particular time, would have some weight, yes, I think it would have some weight.

Q. If there appeared to be no motive at the time? A. Yes, I think one would have to give that some weight.

Q. Doctor, you heard the testimony in this case of the officers who testified, that the man related that two other men were with him? A. Yes,

I did hear that testimony.

Q. Let's assume, doctor, that Mr. Perry, when he made that statement, believed that to be true but that in fact there were no other

64 men with him at the time, but he believed that two other men were with him. Would that make any difference in your judgment? A. I'd like to be sure I understand the question. That he believed, he actually believed that there were two other men with him and factually there were not?

Q. Yes, sir. A. Well, in that case he would be suffering from a delusion, I would say; such facts being true.

Q. And in that case you would come to a contrary conclusion from that you have given us? A. Well, of course, if it was established that he believed there were two other men with him and it was also established definitely that there weren't other men with him, one would have to assume that it was a delusionable idea since it is not in accordance with the facts.

Q. Doctor, when you made your determination as to this man's mental condition, did you then have in your possession the facts relating to this particular event? A. We had the facts, I don't know whether we had the complete detailed facts, we did know that he was charged with using a 1956 Ford truck owned by the Empire Laundry Company, without permission.

Q. You didn't know at that time the statement he was supposed to have made at the time of his arrest? A. I don't recall that we had any

65 of the information -- I presume you are referring to his statement that there were two other men with him?

Q. Yes, sir. A. I don't think that we had that information, I am not positive but I don't recall that data.

Q. Well, did you have the information that this was a bright red laundry truck and was taken under the very nose of the owner? A. No, I don't believe we went into the color of the laundry truck.

MR. HANNON: Your Honor, I think counsel has Dr. Cushard's records. If he makes them available to Dr. Cushard, I think the doctor's recollection would be refreshed regarding what information concerning the offense was furnished to him.

THE COURT: Well, of course, if there is anything that could refresh your recollection, you may use it.

(The records were handed to the witness.)

MR. HANNON: I might suggest that the doctor might look at page 2, next to the last paragraph, of the letter from the United States Attorney's office.

THE WITNESS: From the United States Attorney's office?

MR. HANNON: Yes.

BY MR. ZITOMER:

Q. Perhaps it is in the other file, I think there are two files you
66 have on that, doctor. A. It doesn't mention the color of the motor vehicle, it says for his taking the motor vehicle owned by the Empire Laundry Company and it does say he remained adamant in connection with the claim that there were two other men with him, although he states he does not know the identity of the other men. I didn't recall that but it is a matter of record.

Q. At the time, you didn't know whether or not there were in fact two other men with him? A. No, I don't believe we would have any way of knowing whether there were or not, that is correct, but we did have that information.

Q. Nor would you have any information with respect to his particular attitude at the time he made that statement, his attitude of cooperation or non-cooperation? A. Well, it states here that he was adamant in claiming there were two other men with him and that he did not know their identity. It also mentions these blackouts which I have already mentioned.

Q. Is there anything else in that record that would alter or vary any of your testimony so far given? A. Oh, no, this wouldn't affect my opinion.

MR. HANNON: I object to the question, he said anything else that would alter or vary the doctor's testimony. I don't think the doctor's testimony has altered or varied.

67 THE COURT: I think the question was clear, he said this would not

alter his opinion, and he asked him if there was anything else in the file that would; I think that is a legitimate question.

THE WITNESS: The reason I could answer that without hesitation was because the entire record was taken into consideration at the time the determination was made.

BY MR. ZITOMER:

Q. As I understand, then, you did understand that he had taken the truck of the Empire Laundry and he was adamant in insisting there were two other men? A. That information was available at the time.

Q. But you had no other information relating to that particular offense? A. Just what we had from the United States Attorney.

Q. In other words, you didn't have the information -- A. Let me see if we had anything from the police directly. No, the information about the offense was from the letter from the United States Attorney.

Q. Doctor, would the fact that there appeared to be a motive or a lack of motive for his statement that two other men were with him, would that make a difference in your conclusion as to whether or not he believed that that was so? A. I am not sure I follow that question.

Q. I take it you necessarily have come to the conclusion that he did
68 not believe that two men were with him at the time he made that statement? A. No, we came to the conclusion that he was not mentally ill during the period he was in St. Elizabeth's Hospital.

Q. And necessarily, from your testimony, you would also have come to the conclusion that at the time of his arrest, when he said there were two other men with him, that he did not believe, himself, the statement which he made at that time? A. Well, that would be my attempting to interpret something that he told someone else.

Q. Doctor, if you believe -- A. Now, I have already stated that I could not categorically render an opinion as to what his mental condition was at the time of the crime. I said that we found nothing to indicate that he was mentally ill but that I could not positively state that he was not, on February 12. I could only make a positive statement regarding his condition during the time he was in St. Elizabeth's Hospital.

Q. I understand that if you believed that he had an honest belief that two other men were with him, when two other men were not with him, then you would come to the conclusion that he was psychotic?

A. If he actually believed, had an honest belief that two men were with him and there were not, that would be certainly evidence that he very

69 probably was psychotic, yes, granting those things to be true.

Q. And since you have come to the conclusion that he was not psychotic at the time -- A. No.

THE COURT: No, you are misquoting the doctor.

MR. ZITOMER: I am sorry, Your Honor, that isn't correct.

BY MR. ZITOMER:

Q. Well, doctor, do you have an opinion with respect to whether or not, based upon your examination of the case, this man did have an honest belief, at the time, that two other men were with him at the time he made the statement? A. I don't believe there is any way that I or anyone else could know what beliefs this man had on February 12, 1957, that is something that existed in his own mind. I doubt if I or anyone else could positively ascertain what his beliefs were on that date.

Q. Do you have an opinion? A. No, I don't have an opinion as to what his beliefs were on that date.

Q. In arriving at your conclusions with respect to the patient, wouldn't it have been necessary for you to have formed some sort of evaluation of that statement? A. What his beliefs were on February 12th?

Q. Isn't it necessary for you as a psychiatrist to evaluate that bit

70 of evidence?

THE COURT: He was not trying to determine what the state of the man's mind was on February 12. He was trying to determine whether or not, at the time he examined him, he was suffering from such mental illness as would not permit him to go to trial.

MR. ZITOMER: Yes, Your Honor, and I asked him this question in order to determine whether or not he could form an opinion with respect to his mental competency at the time of the offense, now.

THE COURT: He said he could not.

MR. ZITOMER: He could not now form an opinion?

THE COURT: He couldn't form an opinion as to what the man's condition was on February 12. That is what you said, wasn't it, doctor?

THE WITNESS: I believe, Your Honor, that what I said was that we found nothing , and I include myself in "we," which would indicate that he was mentally ill on February 12, but I could not state categorically that he was not mentally ill on February 12.

THE COURT: That is what I understood you to say.

MR. ZITOMER: My question was designed to determine whether or not in arriving at that conclusion, whether or not he had to place some evaluation upon that testimony. I will go ahead with something else.

71 THE WITNESS: Well, I think the fact that I don't know what the man's beliefs or what his mental condition actually was, because I didn't examine him at that time, is the reason that I cannot give a categorical opinion as to what his mental condition was at that time. I do not have adequate information on which to express a firm opinion.

BY MR. ZITOMER:

Q. Well, doctor, let me ask you this, the other tests that he was subjected to besides his past history, the electroencephalogram, were what you call projective tests? A. The projective tests are some of the tests which are given by the clinical psychologist. There were several tests given, some of these are referred to as projective tests.

THE COURT: What are projective tests? I don't know that term.

THE WITNESS: I'd be glad to try to explain it, Your Honor; of course, I am not a clinical psychologist but I believe I can explain that. In these tests, the individual gives responses to certain stimuli which are presented to him. In other words, he may be presented a card with a certain figure or blot or what not on it, or a figure of a person, and he is asked to tell what he thinks about this picture, what comes into his mind. Now, the reason it is referred to as projective is because there is no way for a person to know what the average or relatively normal person is supposed to give in response to this stimulus. Therefore, he

72 projects his own personality and his own thinking and interprets these pictures or ink blots, or whatever they may be, in terms of what is

going on within his own mind; in other words, he projects himself, his own thinking, and interprets in those terms. If that reasonably explains it?

THE COURT: I think it does.

BY MR. ZITOMER:

Q. Do your records show the result of those tests? A. Yes, it does.

Q. Will you consult the record and tell us what the result was? A. Yes, sir. First, the man did have psychometric tests, that is to determine his intelligence, what is known as the Wechsler-Bellevue intelligence test, and he tests within the average range, at the low average, it is true, but nevertheless beyond the realm of mental deficiency, mental defect.

Q. What was the grade he received? A. The full scale I. Q., intelligence quotient, was 89, the verbal I. Q. was 90, performance I. Q. was 89. The average on this test in the general population runs from 90 to 110. Now, these tests, I might say, are not so accurate that the difference between 89 and 90 would be significant, I think practically any clinical psychologist would verify a variation of three or four points within the realm of error. Perhaps the best thing for me to do, naturally

73 I don't want to try to interpret these tests myself, not being a clinical psychologist, is to read the general opinion given by the examining psychologist.

Q. May I see that? A. Sure. I'd rather give his interpretation or hers, rather than mine.

Q. All right, doctor, would you go ahead? Will you proceed to answer, doctor? A. General impression, personality trait disturbance, emotionally unstable personality in a man of average intellectual potential who is suffering little impairment. There is no evidence that he suffers an organic disorder.

Q. Were there any other tests that were administered to determine whether or not he was mentally ill, besides those which we have discussed? A. Not other than the ones I have already discussed previously. There were other tests besides the psychologicals, in other words, the clinical examination observation.

Q. Have you given us the summary of the projective tests?

A. What I have just read is a summary of the psychological examination which consisted of five tests, the Wechsler adult intelligence scale, the Bender Gestalt, the Wechsler memory scale, the Rorschach, and projective drawings. It is a summary of those tests.

74 * * * *

80 BY MR. ZITOMER:

Q. Doctor, is there any way of determining more conclusively whether or not this man has a true amnesia for the period involved?

A. Not to my knowledge. As I stated, in the absence of any other evidence of mental disease, the amnesia existing as an isolated thing would, in my opinion, be highly improbable and I don't know of any better way. Of course, there are other tests that can be given, whether or not they would be admissible or not, I don't know; such as the injection of certain drugs in the vein, one of the sodium pentothal or sodium amytol or something of that kind, which in some cases will release memories which otherwise are not present.

Q. Is it possible, then, that under the influence of sodium amytol--

81 you call it? A. It is possible, yes, that the alleged amnesia would clear up, it is possible.

Q. Is it possible that under the influence of that, that if he were malingering, that that would be discovered under that test? A. It is possible, it doesn't always happen that even a real amnesia clears up under those drugs, but it certainly is possible because it does occur in some cases.

Q. But in the case of a malingerer, he could be uncovered as a result of such a test? A. It might be.

Q. Are there any other tests which could possibly uncover a malingerer? A. I don't know of any other in addition to what I have already mentioned.

Q. A lie detector test? A. Well, it depends on what one means by a lie detector test. In testing for this sort of thing, we use drugs. I realize that there are other instruments which are used which record the

blood pressure, the pulse, and various things of that kind, which are used by the police. We don't use them.

Q. You don't use them in psychiatry? A. No, that is right.

Q. Was any drug given this patient? A. Not at St. Elizabeth's
82 Hospital.

Q. Do you know whether or not any drug was given to him at any other hospital? A. I do not know whether it was or not, not to my own personal knowledge.

Q. Can you tell us, doctor, why the drug was not administered in this case? A. Yes, I can tell why I am hesitant to use it. If there are no criminal charges pending against a patient, I have little or no hesitancy, but I do have hesitancy in using it where there are criminal charges because I might learn things which would possibly compel me to testify to matters of fact in court, which I am not sure is advisable when one is giving a medical opinion. In other words, where there are criminal charges, I personally am hesitant, and I know most of the other doctors at the hospital are, too.

Q. That is not by virtue of any direction as far as the courts are concerned? A. Oh, no, not at all by direction of the court or by pressure from anyone.

Q. Nor was any resistance given by the accused or any other counsel of the accused? A. No, no, not at all.

Q. So the point was just never brought up? A. Well, it wasn't brought up for the reason that I mentioned, that I hesitate to use it, and
83 not only I, but the other doctors, where there are criminal charges and the individual claims that he can't remember the offense.

Q. As the result of the entire examination, what was the diagnosis in this case? A. The diagnosis which was made at the hospital was sociopathic personality disturbance, antisocial reaction.

Q. Could you reduce that to terms more understandable to us? A. Yes, I will be glad to. It is not too easy to explain. I have a little outline of the symptoms so I can give it and won't leave any of them out. Sociopathic personality disturbance, this is a sort of concept that I drew

up myself from my own knowledge and various other sources. Constitutional, I would like to emphasize the word constitutional, personality disturbance sometimes environmentally conditioned in which the following symptoms are more or less constant. First, it is not related to intelligence; in other words, the intelligence may vary within rather wide limits, in fact within very wide limits, the person may be anywhere from a very dull normal individual to a very superior individual in the sense of intellectual capacity, so it is not related to the level of intelligence of the person.

Second, emotional immaturity and superficiality; in other words, the patients do not have any emotional -- what emotions they have are
84 very superficial, immature and poorly developed, they react on the impulse of the moment with superficial emotions.

Another character of the thing is a failure to learn from experience. Many individuals who commit crimes over and over again, that is individuals who fall into this category, apparently learn nothing whatever from punishment or from experience. They have a very poorly integrated, superficial sex life; that would go along with the general emotional immaturity and superficiality.

There is an absence of any definite life plan. They consider only the immediate situation and the profit to be gained therefrom. There is an almost complete lack of moral standards; some have referred to this as a moral defect as opposed to an intellectual defect, in other words, they seem to have no moral standards to speak of at all.

Very marked egocentricity, that is interest in themselves and their own desires to the exclusion of everyone else's rights and desires. They tend to be emotionally unstable under stress, particularly the stress of confinement and deprivation of liberty. For this reason, these individuals are more prone to develop a transitory or brief psychotic episode when confined, for example, in the penitentiary or jail, than is the average person. But this psychosis or mental disease, if it does develop, is usually rather transitory, for example, we frequently get a patient who
85 has developed such transitory psychosis at the jail and it will clear

up within a few weeks after he gets into a hospital environment.

Another very outstanding characteristic is very defective judgment. They are able to realize the consequences of their acts but they act impulsively and fail to give consideration to the consequences, thinking only of the impulse or desire of the moment. They may and often do have engaging, ingratiating personalities and the facility for manipulating others for their own purposes. I might say that many confidence men fall into this group, they are able to operate because they do have ingratiating, engaging personalities.

There is an inability to form strong bonds with anyone. Again, we get back to the basic concept of an immature, poorly developed emotional life, they don't form strong bonds with anyone.

They have a lack of any real insight into their difficulties; when in trouble, they tend to blame others rather than themselves. They show little or no regard for the truth, and are characteristically very insincere.

That is a sort of a condensation or description of the term as it is used.

Q. A general description of the grouping? A. Of the sociopathic personality disturbance, that is correct.

86 Q. And I suppose, to a greater or lesser extent, they would apply in this particular instance? A. That is our diagnosis in the present case, yes, sir.

Q. And would you conclude that all of these aspects apply in this particular case? A. They apply pretty well. Of course, they don't all have to be present, these are things that are rather characteristically found, but every one of them may not have to be found in every case.

Q. You mentioned difficulty in emotional control. Does that mean that he loses control of his emotions so that he is incapable of controlling his emotions at a given time? A. No, he knows the consequences of his acts but he acts impulsively without considering the consequences, he thinks only of the desire, the need of the moment.

Q. Does it have anything to do with his ability to control, his actual ability to control his emotions? A. No, he knows the consequences,

he could control his actions but he is not interested in controlling his actions. He is interested only in what he wants at the moment.

Q. He is capable of controlling his emotions? A. Yes, sir.

Q. Then you indicated that under some circumstances, he is momentarily or temporarily psychotic? A. Under a condition of stress, particularly confinement, they react very poorly to confinement and

87 stress situations, most characteristically of all, being in jail awaiting trial.

Q. Would an episode of anger generate a psychotic behavior? A. Would it?

Q. Yes, could it? A. Oh, it is possible, I suppose.

Q. I am not asking you about remote possibilities, what I am driving at is this transitory psychotic behavior, you mentioned that under some types of stress that he will become psychotic. A. I don't think of an episode of anger, though, as being a psychosis, anyone may become angry, may become quite angry, without becoming psychotic.

Q. I am not talking about anyone. A. Well, these people, they, the same as anyone else, may.

Q. Well, what do you mean by the term transitory psychosis? A. That they will sometimes develop a psychosis, particularly in a stress situation, particularly confinement.

Q. Is that something that any normal person would do? A. It is possible that anyone might, but as I said, they are somewhat more prone to react poorly to deprivation of their liberty than the average person, because they are emotionally immature.

88 Q. This person under given circumstances is more likely to be psychotic or likely to become psychotic than the average person? A. Somewhat more likely, yes, sir.

Q. It takes some type of stress to cause this psychotic behavior? A. It nearly always occurs in this type of personality when they are deprived of their liberty and particularly if there is a charge hanging over them or something of that kind.

Q. This psychosis, there is no question but that he is, at that time, psychotic? A. If he develops a psychosis, he is undoubtedly psychotic at that time.

Q. You mean to suggest they only become psychotic when they are confined? A. One cannot say that a sociopath or anyone else may not become psychotic whether he is confined or not, I say they are more apt to develop this type of reaction under confinement.

Q. A great deal of the patients you examine are under confinement at the time you examine them, aren't they? A. They don't seem to react unfavorably to the hospital environment, the hospital environment is quite different from a jail environment although they are confined. The psychoses which arise in jail usually clear up when they get into the hospital environment.

89 Q. If a deprivation of liberty will generate this temporary psychosis, I assume that the psychosis is caused by his emotions as a result of the deprivation of his liberty? A. It is based, as I stated, on the fact that these people are emotionally immature, their emotions are poorly controlled, they are more unstable than the average person.

Q. What other circumstances could cause a person of that type to become psychotic other than being in jail? A. Well, I suppose one could give an endless variety, really, of what would cause a psychosis in a sociopath, the same as you could in anyone else, in any individual. In other words, whatever happens to him in life may have something to do with the development of a psychosis either in a sociopath or in any other individual.

Q. From what you have said, I gather there is a greater likelihood that he was psychotic at the time of this offense than he would be in the normal case?

THE COURT: He didn't say that.

THE WITNESS: No, sir.

MR. ZITOMER: I don't believe he did say it, Your Honor, that is what I gathered, I was asking whether or not that would be a correct assumption from what he said.

THE COURT: You can ask him that, but I thought your question implied that that is what he had said.

MR. ZITOMER: Well, I was making that assumption. I want to
90 know whether or not that is a correct assumption.

THE WITNESS: I have no objection to answering it.

THE COURT: Well, answer it.

THE WITNESS: He was not confined; if he committed this crime, he was at liberty at that time.

BY MR. ZITOMER:

Q. Well, then, as I understand it, these people will become psychotic only when in jail? A. No, I didn't say only when they are in jail, I said they are more apt to develop a psychosis in that situation. In other words, when they are in trouble, they are more apt to become emotionally unbalanced and mentally sick.

Q. But they are also apt to become mentally unbalanced under other circumstances? A. They may, anyone may.

Q. I thought that you had testified that he was more apt than the average person to develop a psychosis at any time? A. Under confinement, yes, sir.

Q. Is it true that, not under confinement, he is more apt to develop a psychosis than the average person? A. No, sir, probably less so.

Q. Didn't you indicate earlier in your testimony that this type of person develops a transitory psychosis as a result of emotional stress? A. I said under confinement, because he is less mature and less well-
91 balanced emotionally than the average person, he therefore reacts poorly to stress situations and is more apt to become psychotic when confined under charges or under sentence.

Q. Is it as a result of the stress or is it merely the fact of being confined in jail? In other words, is he more apt to become psychotic as a result of stress than the average person? A. In confinement, yes.

Q. But under other circumstances, the same amount of stress would likely not have any effect on him? A. This is only my opinion now, I can't say whether it is the general opinion or not, but in my

opinion, this is based on the fact that his emotions are superficial and immature, poorly developed, he is therefore somewhat less apt to become mentally ill when at liberty.

Q. What I am trying to drive at is the difference in effect upon these persons of emotional stresses in jail and emotional stresses out of jail? A. Well, I think there is quite a difference between a person being at liberty and being locked up in jail charged with a crime, certainly a lot more stress.

Q. It is no greater stress than being in jail? A. Well, if I could use a personal example, I would certainly feel I was under more stress if I were in jail charged with a crime than if I were at liberty.

92 Q. Then if he were confined to jail, I assume the chances of his becoming psychotic increase? A. Oh, yes, under confinement; yes, sir.

MR. ZITOMER: That is all.

CROSS-EXAMINATION

BY MR. HANNON:

Q. Dr. Cushard, as I understand your testimony, the symptom of an amnesia never exists alone, true amnesia, that there are other symptoms which would indicate mental disease, is that correct? A. Well, Mr. Hannon, the word never is somewhat allied to the word impossible. I think that it is highly improbable that an amnesia would exist in the absence of any other symptoms of mental illness or alcohol or some other toxic agent which caused this.

Q. Then, absent alcoholism, you found no other symptoms of mental disease with respect to this defendant, is that correct? A. That is correct, and apparently there has been a great deal of alcoholism in his case, based principally upon his own statements.

Q. All right. I will ask you, Dr. Cushard, a hypothetical question: That if a patient stated that he had experienced amnesia on three or four occasions over a period of, say, ten years, and that after having

93 spoken to him, you made a clinical examination of him as well as a psychological examination of him, would you expect, sir, to find these other symptoms of mental disease? A. I should expect to find some

other symptoms, either on clinical examinations or on clinical psychological examinations, or both, some indication of mental disease even if it is not active at the time, the projective psychological tests show tendencies even when the psychosis is not active at the time.

Q. Would this be more particularly true with the alleged experiences of amnesia that occurred over a period of ten years? A. Well, of course, I would have to answer that question by saying that one could not, I can't even rule out the possibility of mental disease existing even last February, so certainly I couldn't rule out the fact that he may have possibly have had a mental disease at sometime during the past ten years, it is certainly possible and a recovery.

THE COURT: I don't believe that is the question, as I understood it. The question was, if there had been an amnesia at recurring periods during the past ten years, would you be more likely to find some evidence of other symptoms or indications of mental disease than if there had not been such periods of amnesia?

THE WITNESS: That is assuming that there was a real amnesia?

94 THE COURT: Yes, that is assuming that there was a real amnesia.

THE WITNESS: I think it would be highly probable that there would be some evidence at the present time, although again it is possible that the thing could have cleared up, yes, sir.

THE COURT: I think I understand.

BY MR. HANNON:

Q. When you talked to this patient, doctor, did he tell you that he had experienced amnesia over a period of about ten years? A. He mentioned it as far back as -- he was in Okinawa, I forget the date at the moment. I think I can find it in the case record, however, I don't recall just when that was. 1945.

Q. That would be twelve years. A. That followed an ammunition explosion, according to him, when he was stationed in Okinawa, and the other periods of amnesia occurring to him happened after his return to the States. So the first one, according to him, was in Okinawa in 1945.

Q. Now, a sociopathic personality with antisocial behavior, doctor, he is not a mental defect or suffering from mental disease; is that correct? A. It is my opinion and it is the policy and opinion of the doctors at St.
95 Elizabeth's Hospital that this does not constitute a mental disease or mental defect, and the patients are so recorded and discharged as without mental disorder.

Q. I would ask you this, sir, if the symptoms manifested, which caused you to believe he is a sociopathic personality, are such that would render him unable to determine right from wrong? A. No, sir.

Q. Are they such as would generate or create an irresistible impulse on his behalf to commit certain offenses, for example, the taking of an automobile without permission? A. It could easily generate an impulse but I wouldn't call it an irresistible impulse.

* * * *

97 Q. Finally, doctor, the nature of the offense that the defendant stands charged with here, would that be a product of a sociopathic personality with antisocial behavior? A. Well, first, I can't establish the sociopathic personality is a mental disease, it isn't, I can't even pass the first barrier.

* * * *

REDIRECT EXAMINATION

BY MR. ZITOMER:

Q. Regardless of whether or not it is a disease, could it be probable that the act of which he is now charged is the result of the condition, the mental condition which you have just described? A. It seems to me
98 that I am being asked there to express and opinion as to whether something results from something which doesn't exist, at least according to the way I understand this thing. Maybe I am wrong.

THE COURT: Well, you have stated very clearly, I think, that this kind of sociopathic personality is not a mental defect or disease.

THE WITNESS: It is a type of personality.

THE COURT: It is a type of personality. Now, he is asking you a question that, even though it be not a mental disease or defect, was

the fact that he was of that kind of personality in all probability the cause of his acting as he did in this instance. I don't know how material that is, but that is the question. It doesn't assume it could be a mental defect or disease, which you have definitely stated it is not.

THE WITNESS: As I think about that, I believe the answer would have to be yes, on this basis, that any act that anyone commits at any time, no matter what it is, is the result of his personality, at that time, the type of personality that he has, no matter what type he has; so on that basis, I believe I would have to answer yes to the question.

BY MR. ZITOMER:

Q. Is it possible that the defendant could have had other periods of amnesia which he did not recall or did not know about? A. Possible,
99 yes.

Q. In fact, that frequently occurs, does it not, in a person who has amnesia, that he will have short episodes of it without ever realizing it? A. That does occur where you have a true amnesia, yes.

Q. Assuming a true amnesia? A. Well, he realizes there is a gap, he may find himself in a strange part of town, he may find himself in a strange city; he knows there is a gap in his memory but he doesn't understand why, he knows something has happened.

Q. It is also possible that he could never even have realized that there is a gap in his memory, not possible but -- A. If the length of time were short enough; in other words, a man might have an amnesia, I should suppose, for a few minutes without even leaving the room, he has entered something like that and not realized it. But if it covered any considerable period of time during which he moved from one location to another or, for example, went and bought a suit of clothes or went to the grocery or did something he couldn't remember doing, he would realize there had been a loss of memory.

Q. What if he were sitting on the couch at home for several hours, it is very possible or likely under those circumstances, had he suffered a true amnesia during those two hours; that he would not recall it? A. I
100 think that would be possible, yes.

* * * *

Q. What type of psychosis would he develop under those circumstances? A. If he developed a psychosis, what type would he develop?

Q. Yes. A. A person who develops a psychosis -- excuse me, that isn't right. One cannot forecast with any certainty what type of psychosis he would develop. Most frequently, this type of person develops a schizophrenic type of reaction, if he develops a psychosis, but he may develop a manic-depressive reaction, a depressed or related type or other types. In other words, there is no typical thing that has to develop, if a psychosis develops.

101 Q. Then may we assume that the schizophrenic psychosis would have many of the symptoms which you described which he now has, but in a more severe degree? A. No, I don't believe I described any symtoms of schizophrenia in his case.

Q. But the symptoms which you have described, you described a certain mental condition now, if that condition were developed to a further degree, would he then develop a type of psychosis? A. You say I described a certain mental condition -- yes, I guess the word "condition," but not a mental disease. I described a type of personality, is what I described.

Q. Personality or condition or what have you, but these things which you described, if they were carried to a farther degree and became more pronounced, would he then have a psychosis? In other words, it is a question of whether or not a personality disorder or psychosis is a matter of degree? A. Not in reference to the characteristics that I mentioned of sociopathic personality, no.

* * * *

102 WILLIAM L. PERRY

the defendant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ZITOMER:

Q. Your name is William L. Perry? A. Yes.

Q. You are the defendant in this case? A. Yes, I am.

Q. How old are you, Mr. Perry? A. 29.

Q. Where were you living before you were arrested for this offense? A. 4046-B, Gulf Place, N. E., Washington, D. C.

Q. Who were you living with, if anyone? A. My mother.

Q. Were you then employed? A. Yes.

Q. Where were you employed? A. John W. Glen Corporation, truck company.

Q. What did you do? A. Truck driver, heavy duty.

Q. Do you recall the date you were arrested for this offense?

103 A. Yes.

Q. Did you work on that day? A. Yes, I did.

Q. Do you know the day of the week? A. I think today is the 3rd--the day of this week?

Q. No, what day of the week was it that you had worked, the last day that you have worked? I assume it was in February of this year. A. I think it was a Friday, it was Friday; I am not sure.

Q. Now, when you got off from work, what time did you leave your job? A. I got off from work at about quarter after five. I didn't get into the yard until 5 o'clock, I had to gas the truck up and check the oil; it taken me about fifteen minutes and I left from there.

Q. Where did you go from there? A. I left the yard and went down to the corner of 44th and Hunt Place.

Q. And what time did you get there? A. About twenty minutes after five.

Q. Where did you go from there? A. Well, I stood on the corner there and talked with some friends there that were down there, until about quarter of six. Then --

104 Q. Who were these friends that you talked to? A. A fellow by the name of James Diggs, his brother, and a friend of his brother's.

Q. There were three of them? A. Yes.

Q. And then where did you go after talking with them? A. Well, I went with them. We got in the car and we rode around for awhile.

Q. The three of you? A. Sir?

Q. How many of you got in the car? A. All four of us.

Q. Whose automobile? A. Pete's friend's.

Q. And what did you do after you rode around awhile? A. We went down to Jimmy's house and we set down and looked at television and drank a couple beers.

Q. Then what did you do? A. While we were drinking beers, then about, I couldn't say exactly what time, when I left them there and I told them that I was going home and I would see them later.

Q. And did you? A. No, I didn't.

Q. What did you do? A. I left the house, Browning Place and Meade Street, I walked to the corner of Whittingham Place, turned left,
105 went up a block and a half, began to feel dizzy. Stopped at the school playgrounds, sat on the steps. From there on, I don't remember anything that happened until being asked possibly to sign a slip in the Seat Pleasant Precinct to be transferred to the District.

Q. How long did you sit on the steps? A. I really couldn't say.

Q. Why did you sit on the steps? A. I began to feel dizzy and I thought I might pass out or I didn't want -- most anything might happen, so I said I better sit down and rest myself, it could be something, the beer I drank might have been affecting me. So I decided I'd sit there and rest awhile and maybe it would pass away.

Q. How long had you been dizzy before you sat down? A. Oh, maybe two or three minutes.

Q. Did you walk for two or three minutes before you sat down? A. Oh, I guess it taken me from about ten minutes to walk from where I left the house to the school.

Q. What had you to drink up to that time? A. I had drank three beers and a small shot of whiskey.

Q. Over what period of time? A. I would say maybe half an hour.

Q. What time was it when you left the house? A. That, sir, I
106 couldn't say, I don't know.

Q. What time was it when you arrived at the house? A. Oh, maybe quarter after six, twenty minutes after six, somewhere along in there.

Q. When you arrived there, you were in the company of several others? A. Yes, I was.

Q. What did you do while you were at the house? A. We sit there and look at television and drink beer and the whiskey I told you about.

Q. How many television programs did you watch? A. We came in, there was part of one on, and watched fifteen minutes newscast, and I think it was another program and part of a third one.

Q. Had you had supper? A. No, I hadn't.

Q. You had passed suppertime? A. Yes.

Q. Why did you decide to leave the house and go home? A. Well, I wanted to go home and change clothes, take a bath, change clothes. I told them that I would see them later. We were planning to go to 42d and Edson, up there to the beer garden. So I told them I'd leave now and see them later; go home, eat, take a bath and change clothes.

Q. You were wearing your work clothes? A. Yes, I was.

107 Q. What time did you plan to arrive at the beer garden? A. Oh, we were supposed to meet there at the beer garden at about 8:30 or 9 o'clock.

Q. You were supposed to meet there at 8:30 or 9? A. That is right.

Q. You made those arrangements shortly before you left the house? A. Yes, we did.

Q. Now, what time was it when you realized that you were at the police station? A. I couldn't say, sir, because I didn't know.

Q. What was your next recollection after sitting on the steps of the schoolhouse? A. An officer at the Seat Pleasant Precinct asking me to sign a slip to be transferred to the District.

Q. And then what happened? A. I sit there maybe fifteen or twenty minutes, maybe longer, I don't know for sure. Then they came, the officers from the Metropolitan Police came there and they taken me from there to 14th Precinct.

Q. You recall everything well from the time that the officer wanted you to sign the paper up to the present day, you have a good recollection of everything that happened since? A. I wouldn't say yes.

108 Q. How good is your recollection for the period at the Seat Pleasant Station? A. I remember getting into the car, the officer's car.

Q. Before or after you arrived at the station? A. After I arrived at the station, I remember getting into the officer's car from the Metropolitan Police Department.

Q. You remember anything else? A. Maybe not anyone said anything to me or I said anything to them, I guess about five or ten minutes later, fifteen or twenty minutes, I would say, and then I arrived at the 14th Precinct.

Q. How were you feeling at that time in the Seat Pleasant Station? A. I was feeling dazed, as though it was a mist or something had been--bewildered.

Q. Did you say anything at that time? A. No, I didn't, not that I know of.

Q. You heard the officer testify that you were questioned at the Seat Pleasant Station? A. Yes, I heard that.

Q. Do you recall that? A. No, I don't.

Q. How long were you at the Seat Pleasant Station before you got into the police car? A. Oh, I guess maybe half an hour or forty-five minutes.

109 Q. How do you know you were there forty-five minutes or half an hour? A. I don't know, I am just guessing at it.

Q. How do you form that guess? A. I wouldn't actually say that I really know, but it seems as though time was going slower or -- and time seems to go faster, I would say maybe half an hour or forty-five minutes, that is all I could guess at, anyway.

Q. When you got into the police car, what happened? A. I just sit down and begin to see blurred spots in front of me.

Q. What kind of spots did you see in front of you? A. More like small crystal bubbles with a pink blurred background.

Q. Did you have any trouble seeing at that time? A. A little, not much.

Q. Did you have any trouble walking? A. Kind of wobbly, slightly.

Q. Did you have any trouble talking? A. No, I didn't have any trouble talking because I didn't say anything to anyone.

Q. Where did you go in the police car? A. I left from Seat Pleasant and went to 14, which way they went, I could not tell you.

Q. How long were you in the police car? A. Maybe fifteen or
110 twenty minutes, maybe less, it could be more.

Q. When you got to the police station, what happened there? A. When I got to 14th Precinct, I was put in the lock-up.

Q. How long did you stay there? A. Maybe an hour, an hour and a half, maybe two.

Q. Where did you go from there? A. To No. 1 Precinct.

Q. Did anything happen at this lock-up bar, you say? A. That is what I said, yes.

Q. You call it a locker bar? A. Lock-up.

Q. Lock-up. Did anything happen there, did you talk with anyone? A. No, I didn't talk with anyone.

Q. Did you see anyone? A. No more than the other fellows that was there.

Q. Then you were taken to No. 1 Precinct? A. That is right.

Q. What officers took you to that precinct? A. That, I couldn't tell you, sir.

Q. Do you know whether or not they were the same officers that took you from Seat Pleasant? A. No, sir.

111 Q. They were not or you don't know? A. I don't know.

Q. When you arrived at No. 1 Precinct, what happened? A. I was put into the cell there until I was to leave to come to court, come in court for a hearing.

Q. Did you have any conversation at No. 1 with the police officers? A. They asked me my name and where I lived and where I worked, and my personal belongings, they checked all those.

Q. Were they the two police officers that were here in court, were they either of these two officers? A. No, sir, not that I know of.

Q. Do you recall any other conversation with any police officer

anywhere up to that time? A. Oh, they asked me my name at the 14th Precinct.

Q. What other information, or conversation did you have? A. They was asking me about signing some kind of a paper or something, I remember that.

Q. Where were they asking you that? A. In 14th Precinct.

Q. At 14th Precinct? A. That is right.

Q. What about Seat Pleasant? A. The only thing I remember them asking me at Seat Pleasant was the paper to be transferred to the District.

112 Q. They wanted you to sign some papers the second time at No. 1? A. No.

Q. Did they want you to sign papers the second time? A. At 14.

Q. Did you sign the papers? A. No, I didn't.

Q. What were the papers? A. I don't know, they wouldn't let me read them.

Q. Then what happened? You were taken to No. 1? A. I was put back in the cell and then later I was carried to No. 1 in the patrol wagon by a No. 11 Precinct man.

Q. Did you have any conversation at No. 1 with any police officers? A. No, I didn't.

Q. Were you taken from there to court? A. That is right.

Q. What court were you taken to? Was it this court? A. It was in this building but which court it was, I don't know.

Q. What happened there? A. Well, they set a bond and I was charged, then I was sent to the District Jail.

Q. Did they ask you how you pled? A. I don't know, I don't remember, but I think they did.

113 Q. What did you say? A. I pleaded not guilty.

Q. And then you were in District Jail for how long? A. Oh, maybe a month or more.

Q. Where did you go from District Jail? A. I went from the District Jail, I came back to court and I was sent to the District Jail -- sent to the D.C. General for observation for forty-five days.

Q. Before you were sent to D. C. General Hospital, did you ever come to court again? A. Yes, I came to court again.

Q. Were you asked in court how you pled? A. Yes.

Q. What did you say? A. I didn't know whether to plead guilty or not guilty because I don't remember what happened or how it happened, so they wouldn't take a plea either way.

Q. Then you were sent to D. C. General Hospital? A. That is right.

Q. And how long were you there at the hospital? A. I was at D. C. General Hospital for forty-five days.

Q. As a patient? A. As a patient, yes.

Q. You were returned to the jail or to the court? A. I returned to the jail.

114 Q. Then you were brought back to court again? A. Yes.

Q. For what purpose were you brought back to court the second time, that time? A. I was brought back, I guess to be assigned to a Judge, I guess -- the trial, pardon me.

Q. Were you tried? A. No.

MR. HANNON: Oh, I object to this, Your Honor, he wouldn't know why, and No. 2, I object, the questions are irrelevant and immaterial. He is charged with unauthorized use and nothing else.

MR. ZITOMER: I think it is material to his mental condition.

THE COURT: Oh, I will let you interrogate him. I don't know that he knows all of the legal steps that were taken and why they were taken; very few people do.

BY MR. ZITOMER:

Q. Do you know why you weren't tried that day? A. When I came up, I didn't.

Q. Well, what happened to you when you came up? A. I was brought in court in front of Judge Laws, if I am not mistaken.

Q. What happened in front of Judge Laws? A. They wanted to know whether I pled guilty or not guilty. I wanted to try to get it over with, I

115 didn't know whether I did it or didn't or what had happened, so I said I either plead guilty to it or I don't plead guilty to it, and when I tried

to plead guilty to it, they wouldn't accept my plea.

Q. Do you know why they wouldn't accept your plea? A. I think it was because I didn't remember what had happened or how it happened and I guess they thought it was some mental disorder or something.

Q. Don't tell us what they thought, but you went from there to St. Elizabeth's Hospital? A. Yes, I did.

Q. How long were you there? A. 58 days.

Q. Then you were brought back here for trial? A. Yes, sir.

Q. You heard the testimony in the case about how this offense occurred? A. Yes, I have.

Q. Do you recall driving that truck? A. No, I don't.

Q. Are you familiar with this laundry place of business? A. No, I am not.

Q. Have you ever been there before? A. No, I haven't.

116 Q. I don't mean on that day before, I mean have you ever been there before at any time? A. No, I haven't.

Q. Do you know where that laundry place of business is? A. No.

Q. What kind of truck were you driving at the time you were last employed? A. I was driving a Reo.

Q. What, a Reo? A. Reo.

Q. What kind of truck is that? A. It is a dump truck, it is two and a half ton dump truck.

Q. Two and a half ton truck, it doesn't have any resemblance to a laundry truck, does it? A. No, not at all.

Q. Now, has any part of this period, where you say you can't recall, has any part of this period ever come back to your memory? A. No, not as yet.

Q. Have you made any attempt to recall that period of time? A. I have tried.

Q. Have you ever had an experience where you couldn't remember what had happened for a substantial period of time? A. Yes.

117 Q. Have you had such an experience before? A. Yes.

Q. When was the last time you had such an experience before your arrest? A. Before my arrest?

Q. Yes. A. About three or four months before then.

Q. Just how did it happen on that occasion? A. Well, I left home and I was going to town, it was on a Saturday evening.

Q. What time of the year was it? What season of the year was it? A. During around the first part of fall.

Q. First part of last fall? A. Yes.

Q. Tell us what happened on that occasion. A. I left the house and I was going to town, I wanted to get me a pair of shoes and some articles that I needed and I had my mind definitely set on going to Hahn's for the shoes. I got on the bus at Gulf Place and Minnesota Avenue, but when I got off of the bus I was at 16th and I. Now, how I got there, I don't know.

Q. What happened during that time, did you ever find out? A. No, I never found out what had happened, but I wasn't on the same bus, either.

118 Q. Did anything ever come of that incident? Did you ever learn what happened during that period? A. No, I didn't.

Q. You were not involved in any trouble during that period of time? A. No, I was not.

Q. Did you do anything about it? A. No, I didn't.

Q. Did you seek any medical attention? A. No.

Q. Why not? A. Well, I don't know, I never give it very much thought after that. I figured it is just something that comes and goes.

Q. Well, was there anything unusual about your condition either before or after that episode? A. Yes.

Q. Tell us what that was. A. Groggy condition.

Q. What? A. Groggy.

Q. Groggy when? A. Afterwards, when I realized where I was, I was groggy and dazed.

Q. How long were you groggy and dazed? A. Maybe ten or fifteen

119 minutes.

Q. Did you suffer any ill effects after that? A. No more than a headache, that is all.

Q. How long did this headache last? A. Maybe half an hour.

Q. What type of headache was it? A. Sharp pains that starts from this side of my head and goes across the forehead to the other side, and then they'd come back.

Q. Did you do anything for it? A. I got a box of Anacine aspirins at the drug store and I taken six of those.

Q. Six? A. Six.

Q. Not at one time? A. At one time.

Q. Did that cure your headache? A. Not right away.

Q. Was anything unusual about your condition immediately before that period of amnesia? We will call it amnesia until we have some other term for it, but was there anything unusual about your condition immediately before that period of time? A. Just a pinkish blur with the spots, that is all.

Q. Before this period of amnesia? A. That is right.

120 Q. How long did that last? A. Maybe five minutes.

Q. Anything else about your condition before that period of amnesia? A. Dizziness, that is all.

Q. How long a period of time did that amnesia last, do you know? A. No, I don't.

Q. But you know that you had changed buses? A. Yes, I had.

Q. Was it still daylight? Had there been any change in the weather? A. It was still daylight, only later.

Q. Could you tell from the condition of daylight whether or not a substantial time had passed? A. No, not exactly, because at that time I didn't even give it a thought to even try to time it.

Q. Did you ever have an incident of that type before that? A. Yes.

Q. When was the last time before that? A. The Christmas of 1949, right after the accident at Thanksgiving.

Q. A period of six or seven years earlier? A. Yes.

121 Q. And during the six or seven years, to your knowledge, you had never had such an episode of unconsciousness or amnesia before? A. Well, a few years ago, in 1945, when the ammunition go off on me, for three days I didn't know where I was at.

Q. Did you ever have a period of amnesia before 1945? A. No, not that I know of or could remember.

Q. Well, you had a period of amnesia for three days after the ammunition dump blew up? A. That is right.

Q. What kind of injuries did you receive? A. I was cut in several places and --

Q. Where were you cut? A. One here on my hand, I had some cuts in my side and several on my legs.

Q. Any other injuries? A. No, just very sore, that is all.

Q. Do you know whether or not, during those three days following the explosion, you were conscious? A. No, no more than what I was told by an interpreter in the Yonaperu Village.

Q. An interpreter? A. Yes.

Q. An American? A. No.

122 Q. Korean -- what was the nationality of the interpreter? A. He was one of the Islanders, his nationality I couldn't say.

Q. You were told by him what had happened during the preceding three days? A. Yes.

Q. Did you ever find out whether or not the explosion had caused you to lose consciousness?

MR. HANNON: Objection, Your Honor.

THE COURT: Well, I don't know how to rule on that. Of course, he can't give any medical testimony, but I suppose a person is able to say whether he was unconscious for a period.

MR. ZITOMER: I don't presume to find out what he was told, but only to find out whether he lost consciousness.

THE COURT: That is what I understood his question to be.

MR. HANNON: That is what he was told.

MR. ZITOMER: It is what he was told, but I doubt that it was hearsay.

MR. HANNON: Let's find out how he found out.

MR. ZITOMER: He would have to find out from what someone told him.

MR. HANNON: I object to it.

THE COURT: I think so, too. I will let him answer the question, if he can.

BY MR. ZITOMER:

123 Q. Can you answer the question? A. I will start from the beginning of it and see if I can put it together as best I can.

MR. HANNON: Just a minute, we don't want a story, just the answer to the question.

THE COURT: Yes, the question was do you know whether you were unconscious after the explosion and if so, for how long?

THE WITNESS: I was unconscious but for how long, I couldn't say.

THE COURT: All right.

BY MR. ZITOMER:

Q. Did you get any medical attention following that explosion? A. I was told that I was given first aid at the village.

Q. Did you receive any medical attention after you regained your memory? A. I was carried from there to the hospital and they given me some aspirins and some other pills that they had, to relieve the soreness. At that time, you see, I didn't have any concussion and no broken bones, there wasn't any x-rays taken, they just only examined me by hand.

Q. Were you in trouble during those three days, was there anything that you did that got you involved in trouble during those three days?

124 A. No, not that I know of or was told of.

Q. You were never accused of any crime or any offense or any wrongdoing during those three days where you say you had amnesia? A. No, I wasn't.

Q. And what followed that, did you have any periods of amnesia subsequent to that explosion? A. No, I used to get dizzy; get dizzy and pass out.

Q. You would pass out? A. I would pass out, yes, sir.

Q. How long would that happen? A. When they first started after that, it was about a month later. I was on the ferry coming from the island across and I passed out there.

Q. What year was that? A. That was in 1945, too.

Q. How long after the explosion? A. About a month.

Q. Did you get any medical attention? A. No, they only put cold water on me for awhile and then I come back out of it; how long I was out, I don't know.

Q. When were you discharged from service? A. February 22, 1946.

Q. Was there anything medically wrong with you at the time of your discharge? A. No, no more than just the dizzy spells I had been
125 having.

Q. Were you examined at the time of your discharge? Did you get a medical examination? A. A fast routine check-up.

Q. Nothing like the examinations you were given at St. Elizabeth's or D.C. General? A. No, definitely not.

Q. Now, after your discharge from the service in 1946, did you have any other periods of amnesia? A. Yes.

Q. How many do you believe you had from the time you were discharged up to the time of this arrest? A. Five, possibly four or five.

Q. Were all four or five of these amnesia episodes related to criminal offenses? A. No.

Q. Were any of them related to criminal offenses? A. Two.

Q. Let's begin with the first one of the five. When was that?

A. That was June of 1947.

MR. HANNON: May we approach the bench?

THE COURT: Yes.

(At the bench:)

126 MR. HANNON: I don't know whether he is trying to impeach his own witness by going into his criminal record, that is my first objection to it; and the second objection to it is I don't understand the question when he says were any of these episodes related to criminal offenses. So I think, No. 1, I object on the ground he is trying to impeach his own witness.

THE COURT: He has a right, if he wants to, to bring out previous offenses. You have got a right to do it and he has, too.

MR. HANNON: That constitutes impeachment if he does it, Your Honor.

THE COURT: No, he has a right to give testimony concerning a previous offense.

MR. HANNON: I never heard that.

THE COURT: I have had it hundreds of times in court. In fact, it is usually done to anticipate it being brought up by the cross-examination.

MR. HANNON: Oh, I know how to do it.

MR. ZITOMER: Here is one of the reasons we are introducing it, the doctor's assumption was that it is a feigned amnesia and I am trying to show previous lack of motive for feigning any previous amnesia periods, at least for some of it.

THE COURT: Well, I will let you go into that. I don't see that it is inadmissible on the ground that it impeaches him. Of course, if he was convicted of any offense, why, it does go to his credibility as a
127 witness.

MR. HANNON: He was convicted.

THE COURT: He has got a right to show that.

MR. HANNON: If Your Honor has no objection.

THE COURT: No, I will let that go in.

MR. HANNON: May we have a clarification of the question, he has two, how an episode relates to it?

MR. ZITOMER: I can rephrase the question.

THE COURT: Rephrase it so there won't be any question.

(End of bench conference.)

BY MR. ZITOMER:

Q. Before you answer the last question, when was the next episode of amnesia following your discharge from service? A. June, 1947.

Q. Do you know how long that period of amnesia lasted? A. No, I don't know.

Q. Whether it lasted for more than a day? A. It didn't last that long.

Q. Now, tell us how it occurred? A. At that time, we was living at 49th, 1000 block of 49th Street, N. W., and I left to go to the store which, at that time, was two and a half blocks from the house. But I never got to the store. I wound up back home, maybe forty-five minutes to an hour later. During that time, where I had been or what I had done, I did not know.

128 Q. Was there anything that caused you to regain your memory at that particular time? In other words, did you meet strange people or see any strangers? A. No, usually what happens, when I come out of them, I been walking most of the time and I will probably stop and begin to feel dizzy again, I begin to feel things and I catch myself and it seems as though I open my eyes and looking at some place I have never been before, strange.

Q. Was this episode of amnesia brought to your attention in any unusual way? Did anyone else bring it to your attention or did you realize it yourself? A. I realized it myself because I was by myself at the time that it happened.

Q. What happened during that forty-five minutes to an hour? Do you know? A. No, I don't.

Q. Were you ever told? A. No, I was not.

Q. Did it involve any wrongdoing that you know? A. No, it didn't.

Q. That you were ever told of? A. No.

Q. What was the next period of amnesia following that? A. A month after the accident in 1949.

Q. What accident are you referring to? A. Thanksgiving eve

129 night. I was coming from Bowie, Maryland, going to Glen Arden, Maryland, on George Palmer Highway, four of us in a 1940 Pontiac. Paul Detwiler was driving --

Q. Don't go into the details of the accident, I am only interested in the type of damage or injuries received. A. I was thrown forty-five feet out of the car on the back of my head and my side.

Q. Did you receive any medical attention for it? A. I was carried to No. 5 Rescue Squad, the boy that got killed, they carried him and I

both in the same ambulance. They carried him to some funeral parlor in Bladensburg and brought me on over to Casualty Hospital.

Q. How long were you in the hospital? A. About five minutes. They refused me medical care because I wouldn't sign a statement.

Q. You have some aversion to signing statements? A. No, the way they were talking, half the time I couldn't understand what they were talking about, so I didn't know at the present time what I was signing, so I wouldn't sign anything.

Q. Did you ever receive any medical care for that, as a result of that accident? A. No.

Q. Did you receive any injuries as a result of that accident?

130 A. This, I was in a position where I could not straighten up, I couldn't use my hands and my neck, I could not straighten my neck up, it was on the side of me like this way.

Q. How long did that condition last? A. Approximately a month and a half or two months.

Q. Did you get over it entirely? A. Yes, all except for my serious headaches.

Q. Headaches? A. Yes.

Q. When did they begin? A. They begin very soon, about three or four days afterwards.

Q. After the accident? A. After the accident, yes.

Q. What kind of headaches were they? A. Seemed as though, well, I wouldn't know exactly how to express it, but my opinion would be I had little men in my head with hammers.

Q. Were they any different from headaches you had before? A. Yes, they were much different and most of it occurred in the back of my head and the side.

Q. Well, did you receive any medical attention for that, after that? A. No, no more than taking a quantity of aspirin at one time.

131 Q. Now, you mentioned that you had episodes of amnesia following that accident? A. Yes.

Q. When was the next period of amnesia following that accident? A. About a month, the following month; in fact, it was the following month.

Q. How long a period of time elapsed, how long a period of time was involved? A. Oh, I'd say approximately twenty or twenty-three days.

Q. Twenty or twenty-three days? A. Yes, sir.

Q. You mean you couldn't recall anything that happened during twenty or twenty-three days? A. No, that is when it happened, about that time.

Q. I see. How long did this amnesia period last? A. Oh, I'd say maybe an hour, I guess, maybe forty-five minutes to an hour.

Q. How do you know it lasted that long? A. I was helped upstairs to the bathroom, I never remembered getting there, don't know what I did while I was there and don't remember coming back, but I was told I was taken up there and I came back on my own.

Q. What happened during the period of amnesia besides being
132 being helped up and down the stairs? A. That I don't know.

Q. Were you involved in any wrongdoing during that time? A. No, not that I know of.

Q. Accused of anything? A. No.

Q. Who was it that gave you this information? A. The girl that was staying upstairs in the apartment over us.

Q. Had you been drinking on that occasion? A. No, I hadn't. I couldn't raise my hands up to my mouth to drink, I had to be fed, and if I drink anything, it would have to be given to me by someone else.

Q. During that period? A. During the time that I was hurting from the accident.

Q. Then you had this period of amnesia during the time you were still injured from the accident? A. Yes.

Q. And during that time you couldn't lift your hands? A. No, I could not, the highest I could get my hands would be to my side.

Q. So you had someone else care for you entirely? A. Yes.

* * *

134 Q. You were telling us about the period of amnesia in 1947 following the automobile accident. You described something that related to you, that you had been helped up the steps, is that right? A. Yes.

The accident happened in 1949.

Q. 1949? A. That is right.

Q. So the episode of amnesia you were just testifying to, before we adjourned, occurred shortly after that accident? A. That is right.

Q. Now, when was your next episode of amnesia following that one? A. In 1953.

Q. In 1953? A. That is right.

Q. And how much time was involved in that episode of amnesia? A. I don't know exactly, in fact I don't even have a possible time.

135 Q. Do you know whether or not it involved more or less than a day? A. It didn't involve a whole day, that's for sure.

Q. What was your last recollection before that episode? A. I know I had left home but where I was going at the present time, I do not know.

Q. Well, what do you know about that period of amnesia? A. I know that I wound up in jail.

Q. All right. How long a period of time did that amnesia involve? You couldn't answer that question? A. No.

Q. You were convicted of some offense? A. I pleaded guilty to an offense.

Q. What was the offense? A. Unauthorized use of a vehicle.

Q. Did you recall committing that offense? A. No, I didn't.

Q. You pleaded guilty to it? A. Yes, I did.

Q. Why did you plead guilty to it? A. Well, the attorney that I had at that time, when I explained it to him what had happened, he said he couldn't make no heads or tails out of it, so my best bet for me to do was to plead guilty to it and take what comes, he'd try to get me a

136 light sentence out of it.

Q. Was it in this court, not this courtroom but was it in this building or in the District of Columbia? A. It was in the District of Columbia, yes.

Q. Well, tell us the circumstances about how that period of amnesia began. A. Well, after I left home that evening, I was going to a friend's to visit a friend of mine and I never did get to their house,

and during that time that incident happened at that time, during that time sometime but when or how, I couldn't tell you.

Q. What was your next recollection? A. Waking up in the precinct about 6 o'clock the next morning.

Q. 6 o'clock the next morning? A. That is right.

Q. Had you been drinking on that occasion? A. At that present time, no.

Q. Had you been drinking shortly before that amnesia period began? A. No.

Q. Were you examined by a doctor, psychiatrist, at that time? A. No, I wasn't -- Yes, I was, they had one at the District Jail.

137 Q. They had what? A. They had one talk to me at the District Jail.

Q. Did you discuss your amnesia with him? A. I started to talk to him about it and then he stopped me and he begin to ask me how many hairs were on a dog or did I think that the President would want to poison me, and stuff like that.

Q. He asked you how many hairs are on a dog? A. That's true.

Q. Well, what did you answer to that? A. I couldn't give no answer because I didn't know.

Q. He asked you whether or not the President wanted to poison you? A. That's true.

Q. Was this a psychiatrist asking you this? A. It was supposed to have been, that's what was told to me.

Q. What else happened during this conversation? He asked me a few other questions like did I think my mother wanted to kill me or would I have relations with children of my mother, and he asked me would I have relations with my sister if I had one at that time, and a few other questions, I don't remember exactly what it was.

Q. Did you discuss with him the fact of the amnesia which you

138 said you had? A. I never got a chance to finish it. I started it and he said that was all, he'd see me again and I haven't seen him again since.

Q. That was in 1953? A. That's right.

Q. Did you have any other episode of amnesia following that? A. This one here, that's all.

Q. This is the next one that occurred? A. Yes.

Q. Were you under any particular stress or strain? A. On this one?

Q. At this particular time? A. Well, my wife and I have broken up under some circumstances that her and I, we couldn't get along, she did more drinking than I did and I'd go out and work for money and she'd spend it and you never could see where it went to.

Q. How long had you been separated? A. Now, I'd say pretty close to a year.

Q. How long had you been separated at the time you were arrested? A. About six months.

Q. Was there anything other than this separation which caused you any particular stress or strain? A. My two kids.

139 Q. But nothing occurred that day? A. Yes, I was worried about something that specific day.

Q. What were you worried about that particular day? A. I had been trying to make arrangements so I could get my two kids, one that is in Philadelphia, I wanted to get him here in Washington, and I was going to try to get my girl that is already here in Washington, and I started worrying how to do it and how I was going to be able to pay the money in order to get the legal procedures to do it.

Q. How long had you been thinking about that? A. Oh, I'd been thinking off and on for the past two or three months, I guess, before this happened.

Q. Had anything happened within a day or two before you were arrested? Had there been any changes or developments? A. No.

Q. Had anything else occurred within a day or two preceding your arrest to increase any stress or to give you any particular worry or concern? A. Yes, it was, I was afraid that I was going to have to go back to jail again for nonsupport for the kid that is in Philadelphia.

Q. Had anything happened during the day or two before you were arrested? A. No, no more than worry about that, that is all.

140 Q. During these other episodes of amnesia, do you know whether or not they were related to any particular emotional stress or strain? A. No.

Q. That question is difficult to answer, let me ask you whether there was any particular emotional stress or strain preceding or shortly before those periods of amnesia?

I will withdraw that question.

Do you know what brings about or causes those episodes of amnesia, what makes them occur at any particular time?

A. Most of the time it would be behind a violent argument of some type with someone or a fight.

Q. Is that when they occur, a violent argument or a fight? A. Some of them, yes.

Q. Do you believe that you need any psychiatric care?

* * *

THE WITNESS: Yes, I do.

BY MR. ZITOMER:

Q. Why do you want psychiatric care? A. Because deeply within

141 me, I believe there is something wrong with me and I can't control it, and I would like to find out exactly what it is or if there is any kind of way to cure it.

Q. Do you want to be released? A. I would like to, yes.

Q. Released from jail? A. Yes.

* * *

Q. What do you intend to do if you are released from jail? A. If I was released from jail, I would go to George Washington University, as I was instructed to do at D. C. General, if and when I was released, for possible psychiatric treatment that they told me I probably need.

142 * * *

Q. Have you thought of the possibility that you may be confined at an institution indefinitely? A. No, I have never thought about it.

Q. You never thought of that possibility? A. No, I haven't.

143 Q. Well, what do you think, are you agreeable to spending an indefinite amount of time in a mental institution? A. If it would take that long to cure me, yes, I would stay there.

MR. ZITOMER: That is all I have, Your Honor.

Your Honor please, Dr. Schultz is here from District General Hospital. Would it be agreeable to put him on the stand at this time?

THE COURT: There is no objection to that, is there?

MR. HANNON: I would like, Your Honor, to ask one or two questions before the doctor testifies.

CROSS-EXAMINATION

BY MR. HANNON:

Q. Mr. Perry, in response to your attorney's questions, sir, you told us the first recollection you had regarding this offense. Now, when was that? A. At Seat Pleasant Precinct.

Q. And you were in the precinct -- were you in the precinct at the time? A. The first recollection that I had was at the precinct when they was trying to get me to sign the papers for to be transferred to the District.

Q. Do you remember the paper that you signed, sir? A. It was some kind of a release or something, I don't know.

144 MR. HANNON: May I have this marked as Government Exhibit 1 for identification?

DEPUTY CLERK: Government's Exhibit No. 1 for identification.

(Waiver of Extradition was marked Government's Exhibit No. 1 for identification.)

BY MR. HANNON:

Q. Mr. Perry, I am going to show you a paper that has been marked Government's Exhibit 1 for identification and ask you to examine it. Now, sir, does it contain your signature? A. No. That's my name, all right.

Q. You didn't write that? A. No.

Q. Is that the paper, sir, that you referred to that they were

trying to get you to sign at Seat Pleasant Precinct? A. I don't know whether that is the same paper or not.

Q. It does not contain your signature, then? A. It has my name on it.

Q. That is not the question. Is that your signature that is on that paper? A. I don't know whether I signed that paper or not.

Q. You don't remember whether you signed it, is that what you are saying? A. I am not saying that I don't remember whether I

145 signed it or not, I am saying I don't know whether I signed this one or not.

Q. You told us that you signed a waiver of extradition, didn't you? A. Yes.

Q. All right, now. You have read that, haven't you? A. Yes.

Q. Isn't that a waiver of extradition? A. Yes, this is a waiver of extradition.

Q. Is this the waiver of extradition, sir, that you said you signed? A. No, I couldn't say that because I don't know.

Q. Well, you can recognize your own handwriting, can you not? A. Yes, I can.

Q. And you are not able to tell us whether or not that is your handwriting? A. I don't make an "l" like this and I don't cross my e's and y's like this, either.

Q. Then you are saying that is not your handwriting? A. I don't remember signing nothing like this, not this paper.

Q. I didn't ask you that, sir. I asked you to tell us Yes or No, whether that is your handwriting, signature? A. I can't answer that

146 because I don't know.

Q. You don't know whether that is your signature? A. I know one thing, I don't jam my y's and e's like that.

Q. And you are not able to tell us whether or not it is your signature? A. I couldn't say whether that is mine or not.

Q. It might be? A. I can't say that, either.

Q. It might not be, then? A. I am not going to say that, either.

Q. What are you going to say? A. I don't know whether it is mine or not. Look, that is not my handwriting as far as I am concerned.

Q. You are sure of that? A. I don't jam my e's and y's together like that and I don't make --

Q. You are sure this is not your handwriting? A. No, I won't be too sure of that, either.

Q. All right. Let me ask you this, are you as sure of your testimony regarding what your first recollection is? A. As far as I can remember, yes.

Q. Well, would you think back for a moment and see if that is your best recollection? Have you thought back, sir? A. That is right.

147 Q. And now, is it your testimony that your first recollection regarding this offense of which you stand charged was when you were at Seat Pleasant Precinct and they were trying to get you to sign a paper, is that right? A. That is right.

Q. That is your very first recollection? A. As far as I can remember, yes.

Q. As far as you remember. You ever remember telling anybody any different than that? A. No.

MR. HANNON: All right. Those are the questions I had to ask, Your Honor. I will continue after the doctor.

THE COURT: All right, you may step down for the moment and we will call the physician.

* * *

DR. JOHN D. SCHULTZ

called as a witness by the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ZITOMER:

Q. Will you state your full name? A. Dr. John D. Schultz.

Q. Are you a licensed physician? A. Yes.

148 Q. You practice on the staff of D. C. General Hospital? A. Yes.

Q. In what capacity? A. I am chief psychiatrist.

Q. And what are you qualifications as a psychiatrist?

MR. HANNON: Your Honor, I will stipulate to the doctor's qualifications in psychiatry.

THE COURT: All right.

MR. ZITOMER: That is agreeable, Your Honor.

BY MR. ZITOMER:

Q. Doctor, did you have occasion to make an examination of William L. Perry? A. Yes.

Q. How did you come to make the examination of William L. Perry? A. In my capacity as chief of the Psychiatric Service, I see patients remanded to us by the court, to confirm to my own satisfaction the findings of the staff who have reported to me the results of their examinations.

Q. Can you tell us, then, what was done to or with Mr. Perry on his arrival at D. C. General? A. He was assigned to a team of the staff consisting of social workers, psychologists, senior psychiatrists, and several of the junior staff, and in addition we asked the ward per-
149 sonnel to particularly make notes on behavior and to record their observations. This was the immediate procedure and this was done.

Q. For how long a period was Mr. Perry in your department? A. May I examine the records, sir? I haven't known this for about six months or so. He was admitted March 26, 1957, and discharged May 16, a little less than two months.

Q. Doctor, as a result of the examinations given Mr. Perry, was a conference held to determine what his condition was? A. Several conferences were held during the course of his stay, yes, sir.

Q. Who participated in the conferences? A. I would again have to examine the record. I know off-hand some of the persons who participated.

Q. You can examine the record, if there is no objection. A. Dr. Perman, Dr. McIndoo, Dr. Levy, Mrs. Wickey, she is the social worker; I think they were the senior staff. Dr. Hein, Dr. Spencer, Dr. Anasuya. This is the one conference that is recorded in this particular chart, there were other conferences that are not recorded.

Q. Did you participate, doctor, in those conferences? A. Not in this one; I did in others, yes, prior to his leaving, we had a con-
150 ference to discuss diagnostic implications because there were some complexities that were somewhat uncertain, we wanted to feel sure of our judgment.

Q. And was a diagnosis made of this man's condition? A. Yes, sir.

Q. Who made the diagnosis? A. Well, that was a joint opinion. I suppose I did, in the sense that I concurred in it, Dr. Hein actually wrote it in the chart.

Q. Now, what was the basis for the opinion and diagnosis that was made, in other words, what information was used? A. His productions and response to psychiatric interviewing, the history we had obtained not only from the individual but particularly from his family, his parents, his response to certain formal testing on the part of psychologists as well as the members of the staff.

Q. And on the basis of the facts which are now of record in that part of the record there? A. I think most of them are a matter of record, I assume they are.

Q. Doctor, as a result of all that information, what diagnosis was reached and concurred in by you? A. Yes, dissociative reaction.

Q. Is that the diagnosis?

THE COURT: What is that?

151 THE WITNESS: Dissociative, it is more commonly hysteria, but the standard classification now uses this phrase.

BY MR. ZITOMER:

Q. Can you define for us the meaning of that in this particular case? A. It applies to a person who, in response to emotional stress, internal emotional stress, may behave for varying periods of time in a disturbed way, either with excitement or with bizarre behavior or possibly with amnesia; or with other evidence, external evidence, that he is disturbed, that is, it would be apparent to others but he is not at the time aware that he is disturbed.

Q Q. Now, would this behavior which you have just described -- before I ask you this, are you aware of the fact that he was committed as a result of having taken a truck, a red laundry truck? A. Yes, I have examined some of the notes here and recall the details. I knew that a truck was involved, I had no idea what kind of truck.

Q. Is it probable that the act which he committed at that time was a result of that behavior which you have just outlined? A. I can't say it was probable, sir.

Q. Are there any other facts which I could give you which might help you in reaching a determination on that question? Is there any other
152 information you would like to know? A. Well, we do have some facts which might support the position that it was certainly possible; our understanding was, and the information that we had, that he had been drinking. Now, a person with this particular kind of personality disorder does not tolerate alcohol well, he is inclined to behave violently, often with amnesia; in fact, must of the amnesia frequently is under the influence of alcohol; quite complex behavior is possible.

Q. How much alcohol? A. It doesn't take very much, it will vary a great deal with individuals, however. Some will drink a quart and still behave quite well; others, on the basis of one or two drinks, might drive a car around town and have no recollection they did so.

Q. What I was driving at was whether or not this "under the influence of alcohol" is meant to mean that he must be intoxicated? A. No, the relationship there is that the individual has internal emotional pressures and the alcohol releases that, even a small amount, and it may appear as rage, it may appear as some kind of antisocial, disturbed behavior, it may appear simply as some kind of hyperactivity or highly complex behavior which isn't on the face of it antisocial in the sense of the word. In other words, the alcohol serves to release from repression
153 emotional tensions that are within the personality and in response to the emotional pressures, you see, he could do the same thing when he is not drinking if some external situation precipitated an emotional reaction.

Q. In other words, even anger could precipitate that? A. It could produce similar behavior.

Q. Or in absence of anger, some alcohol? A. Yes, but what happened activated an internal emotional conflict or pressure that is then the cause of the behavior.

Q. Well, to go back to the question which I just put, are there any facts which I could relate to you or which you would like to know, before reaching a determination of whether or not his taking the automobile on this particular occasion was a result or probably a result of that behavior? A. A particular episode, I think not. One would have to actually see him, examine him at the time, the amount of emotional disturbance he showed at the time might be significant, particularly if he was not apparently excited or disturbed.

Q. What significance would the fact that he was not excited or disturbed at the time have? A. Well, it would imply that his behavior was in response to some emotional pressure other than you see discharged in the form of rage or excitement. It is either/or, usually

154 when drinking the person either does do complex things which he may or may not remember, it depends upon the circumstances; unfortunately, there are many factors that influence that and I doubt if there is any way we could ever know that a particular piece of behavior was or was not truly amnesic, it could be, that is about all I could say.

Q. Did the doctors reach an opinion as to whether or not this patient suffered an amnesia? A. We believe he is subject to periods of amnesia. As to whether this particlar episode was an episode of amnesia, I don't believe any of us had any conviction on that.

* * *

155 Q. Let me put this question. Assuming that a person had all the characteristics which you have just described, and assume that on the night of February 12, 1957, this person was in company of three or four other men, got off of work without eating dinner and went to their house, stayed there perhaps an hour, had several beers and from there started to walk home; after going two blocks, he felt a dizziness overtake him, stopped and he sat on the steps of an adjacent building to recover from this dizziness; that thereafter he found himself in the vicinity of a garage

and laundry building, found a truck, a bright red laundry truck in front of the building with the key in the switch; the owner of the truck was seated a few feet from the building within the brightly lighted building, clearly visible in view; that the man gets into the truck, starts the engine and when pursued by the owners, drives several blocks, the vehicle comes to a stop because of a minor accident or some inaccessibility of the roadway, the vehicle was forced to a stop; and he then attempts to run away from his pursuers, is caught, violently resists, a police officer comes to the scene, the police officer finds the man docile and cooperative, he is taken to the police station a mile or so away, a short distance away from the scene, and there is cooperative and answers questions in response to questions; he is asked why he took the automobile, he said he was joyriding and says that
156 there were two other men with him; that in fact there were no two other men with him, the fact that two other men were not with him is pretty well established, but that he says there were two other men with him; and that later on, within an hour, he is taken into the City of Washington, a few miles distant, where he is asked the same question and he says two other men were with him and he was joyriding; that the man states that he has a period of amnesia from the time that he sat on the steps to the time that he was brought to the Seat Pleasant Station; in other words, beginning with the point when he sat on the steps to a point when he was returned to Seat Pleasant station and was being interrogated, that for that period of time he had or claims a period of amnesia. Would those facts put you in a position to give us an opinion as to whether or not his activities during that time were a result of the behavior which you described? A. Yes, there are several things that you include that certainly would heavily weigh in the direction of this as a dissociative piece of behavior. The one, the time; it usually does occur in the course of some other behavior and is a sudden deviation of that behavior. Another is, I don't know that this is a fact, but let me put it a different way, in general terms, any behavior that seemingly is in part or entirely without purpose, particularly if that purpose can have some symbolic meaning. Now, the
157 reason I stress that is that you said something about he thought he was joyriding. One of the characteristics of hysterical conversion

mechanism is that behavior does have a meaning and a purpose; it is a meaning and a purpose that is not reasonably going to fulfill the need that the individual is expressing but in a symbolic way, a kind of acting, it does fulfill the need. And from your description of the episode, what happened, if what happened is as you described it, it does have some of those characteristics; it was a red truck, I don't mean to emphasize a small point, but it is just such little things as this which will fit in with the chain of associations, it is a little bit as if a person were acting in a dream state, the dream is not without meaning, it has meaning if you can read the meaning, but the associations are those of words and sounds and colors, rather than logical and developed trends of thought. I don't know whether that is helpful or not. Those elements do seem to be, to some degree, inherent in what you described.

Q. Would they, then, tend to indicate that his activities of that night were a result of that behavior which you have earlier described? A. Yes, they would.

* * *

158 Q. I didn't complete my question. Of what significance is the term psychotic or the description psychosis? A. In the context in which I am using it, in a medical sense, it is applied to a certain group of disorders which we describe as the psychoses, schizophrenic, manic-depressive disorders. I also use it, though, in what is my interpretation of a legal sense, that is, behavior that is -- well, let me put it differently, I am sorry. In the legal sense of does the person need to be committed, is he dangerous to himself or others by reason of the products of his mental illness. This is a psychosis and has very little to do, although there is a rough relationship between that and the clinical diagnosis -- in other words, a schizophrenic is psychotic in a medical sense; certain types of severe behavior disorders, such as psychopathic personality, can be psychotic in the sense that he needs to be committed because his illness leads to destructive behavior either to himself or others. Those are the two ways in which I use the term psychosis.

Q. Well, if we were to use the term without reference to any legal meaning on the assumption that, of course, the legal determination

will be made by the Court, was there anything in the pattern of personality behavior to indicate any form of psychosis? A. No, sir.

* * *

160 Q. Did you find any signs or symptoms of any mental defect? A. Yes, sir. May I reconsider that. I am afraid my answer would be misleading if I just said no; it depends on how I define mental defect.

Q. What do you define signs and symptoms of? A. If you want me to say mental defect, no, I did not.

Q. You found signs and symptoms of something, what were they?' A. I found signs and symptoms of mental disease.

MR. ZITOMER: Thank you. That is all I have.

161 CROSS-EXAMINATION

BY MR. HANNON:

Q. When did you examine him, Dr. Schultz? A. On a number of occasions in terms of actually speaking to him, all briefly. I have to point out that my examination was largely a matter of observation and the information that I received about him, rather than from my own direct questioning. I did talk with him and asked him questions.

Q. When and how often, sir? A. When? I have no dates because they are not recorded. It was on the course of my rounds each morning. I see as many of the patients on the security unit as I can. He was in the hospital several months, I must have talked to him at lease six or eight times.

Q. Briefly? A. Briefly, yes, the periods vary from a few minutes to five to ten minutes, perhaps.

Q. Let me ask you this, Dr. Schultz, if you did not have data furnished to you by other psychiatrists, resident psychiatrists perhaps that have talked to this patient, would you make a diagnosis similar to the one you have rendered here this afternoon on the basis of the number of times that you saw the defendant personally and the number of times you spoke to him? A. Well, I again think a no answer would be misleading, that would apply to any patient of this kind.

162 Q. I am interested in this patient, doctor. Would you make a diagnosis such as you have testified -- A. On the basis of my own personal -- No.

Q. -- on the basis of your own personal contact with the patient? A. No, sir.

Q. Is he what you call a sociopathic personality? A. No, sir, he is not a sociopathic personality.

Q. What is he, sir? A. The diagnosis is dissociative reaction, that is a form of hysteria.

Q. And it is a mental disease? A. Yes, sir, very definitely.

Q. Now, Dr. Schultz, you were requested, were you not, to furnish the court a report regarding this subject, after your examinations were completed? A. That is right.

Q. It was furnished over your signature? A. That is right.

Q. Do you have a copy of it in your file? A. I think there is a copy in this record.

Q. Would you look at it, sir? A. Surely. Yes.

Q. Now, have you indicated there, sir, to the court, that in
163 your opinion he was suffering from dissociative reaction -- is that the proper expression? A. Dissociative. Well, my copy has a typographical error which I did not observe at the time, if this is the one I signed, it is possible, we do sign many of these.

Q. I will show you the one, doctor, that is contained in the court record that was transmitted to the court and received as part of the court's record; yours is a copy of it. A. That, too, has a typographical error.

Q. What significance, sir, is the typographical error? A. I think of little significance, it doesn't change the general sense of the letter.

Q. All right. Now, have you indicated, sir -- that is dated May 7, is that correct? A. That is right, sir.

Q. Have you indicated in the letter to the court, sir, that this subject was suffering from a dissociative reaction? A. Not in those

terms, no sir.

Q. Well, what terms do you use that might indicate it?
A. Well, it does involve the typographical error. May I read it? This reads: "Complete psychological and psychiatric evaluation reveal him to have brittle control" -- that word "brittle" I am sure is an error -- "over his primitive emotions, with the future possibility of a mental illness." I can only tell you that I feel reasonably assured it should have been "little" not "brittle."

164 Q. I refer, sir, to the closing phrase, "With the future possibility of a mental illness." Would you have said that, sir, if he were suffering from a mental illness at the time that you examined him?
A. In this letter, I am using mental illness in the term of psychosis because that is what we were asked to determine.

Q. You were asked to determine what, sir, in the order of the court? A. The next to the last paragraph sums up what I think we were asked to determine, we said he is sane, competent and capable of participating in his own defense. If you'd like, I can refer back to the order of the court. Would you like me to refer to the order?

Q. Yes, please do. A. Ordered, that the defendant be committed to the District of Columbia General Hospital for a period not to exceed 60 days, to be examined by psychiatric staff of said hospital, the chief psychiatrist of said hospital will, upon completion of said examination -- I emphasize this says examined by staff, not by myself -- the chief psychiatrist upon the completion of said examination will file with this court a written report of examination, pursuant to Title 24, and so on, which report shall express the opinion of the staff of the hospital on the

165 present sanity or mental competency of the defendant. That is what we were asked to report on.

Q. Now, as I understand, sir, at the time that you wrote this letter wherein you state, "at the present time, however, he is sane, competent and capable of participating in his own defense," that at the time, sir, that you said that, it was nonetheless your opinion that he was suffering from a mental disease? A. That is correct, sir.

Q. Well, what language does the staff of the D. C. General Hospital, the psychiatric staff of the hospital, use to express a mental disease so that the court will be aware of it? A. Well, the question wasn't asked in those terms. I could only say that in our opinion at the time, any further expression, we felt, would have been gratuitous. I don't know that we perhaps seriously considered that, perhaps we should have, but it is true we did not go beyond the question that was asked.

Q. Your prognosis is a future possibility of a mental illness, that is in the second part? A. Prognosis, yes.

Q. Now, when you say future possibility of mental illness, you are not referring to this mental disease that he was suffering with at the time you wrote the letter, dissociative reaction? A. That is right.

166 Q. What would you use to describe that dissociative reaction? A. Again, unfortunately, words are involved, we could use the same words, mental illness, I am using it here in a double sense, mental illness, in that paragraph, a future possibility of mental illness; we are implying what it usually means to the lay person, that is, psychosis, it would have been better to have said psychosis there, that is what we meant.

Q. You have examined many patients at the request of this court, have you not, sir? A. Yes.

Q. You understand that in the opinions expressed to the court that there are mental disease and mental defects? A. That is right.

Q. Does that encompass the whole field, if I might use the broad term, of insanity? A. Yes.

Q. Now, a man, then, an insane person, has either a mental defect or he is suffering from a mental disease? A. An insane person, yes, has either a mental disease or mental defect.

Q. And yet you say that the prognosis for this man is a future illness and at the same time you say he is sane. Now, how, sir, can

167 you say he is sane, if at the same time he was suffering from a mental disease, to wit, dissociative reaction, sir? A. Well, if you

want me to try to explain that --

Q. I would like it very much. A. You asked me does mental disease or defect encompass the realm of insanity; it does, it goes much beyond that, however, and encompasses much more than insanity. A person can have mental disease or defect and not be insane.

Q. What, then, sir, would he be, just suffering from a mental disease? A. Have a mental disease or defect, perhaps he'd see a psychiatrist at Georgetown or in his office; his mental disease or defect might be so severe that there is danger of his killing himself or harming someone else, it still does not imply he is insane. It might be so severe he can't work. In other words, there are a great many mental diseases that are not insanity.

Q. What is your definition of insanity? A. Insanity?

Q. Yes. A. It is a mental disease or defect of such severity and degree that the person is not capable of controlling his own behavior nor is he responsible for the products of that mental disease or defect.

168 Q. He is not responsible for his actions, is that what you said? A. Yes, that is right.

Q. Insanity is a mental disease or a mental defect, I think you used both? A. Yes.

Q. All right, would you continue with your definition? A. It is a matter of degree, sir. Perhaps it would help you to have me explain that this is a question we must determine every week with a great many patients who are brought in to us, they have a mental disease, is this of such severity that it is insanity and, therefore, they need to be committed? Now, it is still a mental disease; we discharge them and yet they have a mental disease.

Q. But many so-called normal people have a neurosis or aspects of neurosis, do they not? A. Well, not normal, it is somewhat self-limiting; no, I wouldn't call them normal if they are also sufficiently ill to have what would clinically be defined as neurosis.

Q. How about aspects or a type of behavior touching on neurosis?

A. There are degrees of neurosis, of greater and lesser degrees of severity.

Q. And now somewhere between insanity and the type of mental disease this man has, you draw a line and say that this dissociative
169 reaction doesn't step over into the field of insanity as far as he is concerned, is that correct? A. That is correct.

Q. But now you say that the reason that you made the diagnosis of dissociative reaction is that he had gone through some strange or bizarre behavior, is that correct? A. Well, there is much more to it than that, sir. This diagnosis can only be made on the basis of one's judgment and interpretation of a large body of observational data, informational data, accurate to the extent that we can presume it to be accurate; in other words, it is not a diagnosis that can be made by sitting down and talking to him. One could talk to a person for two hours and not be at all aware.

Q. You made other tests? A. That is right.

Q. You made clinical tests, sir? A. The psychologists made certain tests.

Q. I am not talking about the psychological tests. Were x-rays made of the skull? A. No, brain waves were taken, I don't think x-rays were made, I can consult the record.

Q. An electroencephalogram? A. Yes, that is the result.

Q. What was the result of the electroencephalogram? A. As I recall, it was normal; that is right.

170 Q. Now, you are of the view that in his state at the time you examined him, that he could be amnesic, you said, is that correct? A. That is right.

Q. Now, this amnesia, does it exist in and of itself or are there other symptoms that exist with it? A. There are other symptoms that exist with it.

Q. What are the other symptoms existing with amnesia with respect to this man that you found? A. None of the symptoms of amnesia but other symptoms of dissociative reaction, hysteria,

emotional instability, headaches.

Q. Now, as you name them, may I ask you this, is that also a symptom for a sociopathic personality? A. Emotional instability, usually not, most sociopaths are quite able to control their feelings.

Q. Aren't sociopaths impulsive? A. Impulsive, yes.

Q. Well, then, emotional instability, isn't that an impulsive type? A. No, sir, not necessarily. A person can be very emotional sitting still. Impulse implies doing something, acting; at least, to me.

Q. How about unstable under stress, is that emotional instability? A. If it is displayed as emotional behavior, yes.

171 Q. So that if you came and recognized emotional instability in somebody, you wouldn't at that time decide that he was a dissociative reaction type as distinguished from the sociopath, would you?

A. Well, it would be one indication of that difference, yes. Again, it would depend upon the degree and other elements in the personality.

Q. What are other symptoms that you found in him, sir, regarding this dissociative reaction type? A. The history going back into childhood, temper tantrums, headaches, fear of illness.

Q. Did you speak to his mother about those, sir? A. I didn't, no.

Q. Did you review your record regarding what he said about those, as distinguished from what his mother may have said? A. No, I have not reviewed the record, sir.

* * *

175 Q. Dr. Schultz, I will withdraw my last question and ask you this: Mr. Zitomer posed a hypothetical question to you, the purpose of which was to determine from you or get from you an opinion regarding whether, under similar circumstances as have been related to you, a subject such as Mr. Perry, as you know Mr. Perry from his commitment to D. C. General Hospital, would have been caused from his condition, as you recognized it, or his condition as you recognized, caused him to steal --strike steal -- to take without permission the

176 red truck involved in a similar case as this. Would you give us

your answer to that question? A. It could have. In other words, the action, as I understand it or as it was recently described, could have been the product of the diagnosis we made.

THE COURT: Can you state whether, in your opinion, it was? That is what we are driving at.

THE WITNESS: I think it was.

THE COURT: You do?

THE WITNESS: I do. On the basis of what information I have, it is my considered opinion that it was.

THE COURT: And you think the condition he was suffering with at that time, his mental condition, disease or defect, produced this action?

THE WITNESS: Yes, it is my opinion that it probably did.

THE COURT: I think that states his opinion.

BY MR. HANNON:

Q. Doctor, I refer, sir, to what has been captioned as a case summary that is part of your hospital report, and ask you the circumstances under which that information was compiled, how was that gathered? A. This is a summary that usually represents a compiling of the data in the record, in the closing of any record, it is for medical purposes primarily; it is often done by residents or
177 students or sometimes by a staff person, for each record, regardless of the means by which the patient came into the hospital.

Q. A matter of routine? A. That is right.

Q. And incorporated in the hospital records? A. All patients have such records.

Q. I ask you, sir, whether this indicates a history or case summary obtained from the defendant William Perry, the defendant in this case, was that obtained from him? A. It is the product of all sources of information; without knowing and going back into the record, I don't know where the person who made the summary -- that part of its says, "as his story goes."

Q. Would you say that was taken from him, then? A. That is

what it says here.

MR. HANNON: May I show this to counsel?

(Handing document to Mr. Zitomer.)

MR. ZITOMER: Doctor, do you know the date on which this summary was made?

THE WITNESS: I don't, without looking at it. Well, it isn't dated. My presumption is that it was made near the termination of his stay in the hospital, but that does not mean it is a closing summary; it could have been made at the time of his staff presentation, that is often accepted as the closing summary; I think it probably was, from the
178 length and extent of the note.

MR. HANNON: Your Honor, at this time I am offering the case summary of the D. C. General Hospital which is the last two pages of the case summary.

THE COURT: Any objection?

MR. HANNON: And I offer it intact, Your Honor.

MR. ZITOMER: I understood from what Mr. Hannon just told me that he was just interested in the first half of the summary down to the word "unconsciously," "done this thing completely unconsciously," and to that portion I have no objection to it being read to the jury.

MR. HANNON: I am not going to delete anything from it, whatever is in it and the jury wants to see it, they may see it. And I don't have any objection either, to agreeing to just that half.

THE COURT: Do you agree to it?

MR. HANNON: I will agree to it.

THE COURT: I will admit what has been agreed.

(Two pages of case summary, D.C. General, was marked Government's Exhibit No. 2 and received in evidence.)

MR. HANNON: May I read it?

THE COURT: Yes.

MR. HANNON: "William Perry, 29 years old, colored male, admitted at request of the court to evaluate the patient's sanity in regard

179 to ability to understand the actions taken against him. As his story goes, six weeks p.t.a. he was out drinking one evening with some friends of his, about 11 at night he started home and had 'a spell'. The next thing he knew, he was somewhere in Maryland and was being apprehended for stealing a truck."

That much, Your Honor, I offer.

BY MR. HANNON:

Q. Doctor, you were relating to us the other symptoms manifested by Perry which reflect that he is a dissociative reaction type, and you said emotional instability is one? A. That is right.

Q. Pardon me? A. That is right.

Q. And did you, to some degree, agree that that same symptom exists in sociopaths? A. I agree only to a small degree, very few symptoms of mental illness that are not common to all mental illness to a degree.

Q. Is impulsiveness a symptom of a sociopathic personality? A. Yes.

Q. And that is also indifference to the consequence of whatever a person's actions might be? A. That is right.

180 Q. Did you find that symptom in Perry, sir? A. Yes. I might modify that, though, again it is a matter of degree. A person with dissociative reaction may commit acts which are a serious social detriment but that is most unusual; whereas, a psychopath, it matters not the least bit the degree of social detriment.

Q. You didn't say he was a psychopath? A. No, I thought that was the differentiation you were trying to make.

Q. I'd like a differentiation between a dissociative reaction type and sociopathic type. A. Yes, that is what I thought you were making.

Q. Did you make a distinction between the two? A. Yes.

Q. Would you repeat it for me? A. That the sociopath has no regard at all for the moral aspects, he has no feelings of guilt at all for the effect of his reactions. The hysteric does, to a degree, so that he rarely commits crimes of major significance, although he is

capable of and could, under the impulse of the moment, shoot someone.

Q. Well, since a dissociative does have a regard for the consequences of his act, would it be likely that he would repeat the same offense over and over again? A. He might and he might not, he could.

181 Q. Excuse me, I don't want to interrupt, would he? A. There is just no Yes or No answer to that, I can't answer that.

Q. Between a sociopathic type and a dissociative reaction type, which of the two would be inclined to repeat the offense? A. They would both be inclined to repeat the same kind of behavior.

Q. Notwithstanding the fact that you say the dissociative type does have a consideration for the consequences? A. The sociopath would be more likely to repeat, particularly behavior that is clearly antisocial, I would say that definitely.

Q. Now, about the symptom or failure to learn from experience, did you find that symptom manifested in this subject, sir? A. No.

Q. Do you think that he is capable of learning from experience? A. Yes.

Q. How about moral standards, sir, do the moral standards of a sociopath differ from that of a dissociative reaction type? A. Yes, to the extent that the sociopath has no particular regard one way or the other, if he is behaving morally, it is more by accident than it is by design. The dissociative usually behaves morally to a very large degree, but there are many exceptions to that.

182 Q. Did you inquire as to his moral conduct? A. Yes.

Q. What did you learn? A. The general pattern of his total life history now, not any particular series of episodes, we had the impression was reasonably good.

Q. He was what, sir? A. Reasonably good.

Q. Is he addicted in any degree at all to alcoholism? A. Yes, sir.

Q. He is, his record shows that, does it not? A. Yes.

Q. To what degree, a large degree? A. No, sir.

Q. Didn't he in the past consume large quantities of liquor, according to your records? A. Well, again, this is relative, forty per cent of my patients come in with d.t.'s, I don't think he has ever had d.t.'s or prolonged intoxication to the point of requiring hospitalization for this purpose. We have a history of spree drinking, heavy drinking, episodic.

Q. Excessive? A. Yes, it would be excessive to me.

183 Q. Did you have a history of prolonged drinking? A. I don't recall that we had that history.

Q. Did you determine whether he was married? A. Yes, sir.

Q. And is he living with his wife, do you know that? A. There had been a great deal of marital difficulty.

Q. Do you know the answer to the question? A. No, I don't know.

Q. You don't know, all right. And as part of your report, do you also obtain information from the court regarding any criminal background, if he has one? A. From the courts, usually not.

Q. Or from the police authorities? A. Yes.

Q. Was that available to you, sir, without telling us -- A. Yes, I do know that, I don't believe we inquired of the police in this regard.

Q. You don't know whether he has a criminal background or not? A. No, I know he had had a record of other criminal behavior.

* * *

184 THE COURT: I think the defendant was on the stand and was interrupted for the doctor's testimony.

185 WILLIAM L. PERRY

resumed the stand and testified further as follows:

CROSS-EXAMINATION
(Resumed)

BY MR. HANNON:

Q. Mr. Perry, do you feel all right, do you? A. Go ahead.

Q. Now, you keep your voice up, if you will. In response to your counsel's question regarding these episodes, we will call them

blackouts, he asked you how many you had in connection with criminal activities and you said two, is that correct? A. That's right.

Q. Now, you told us about the one that occurred in 1953 and I think that in connection with the other one, you said in 1950, is that right? A. No.

Q. When was the second one? A. This one here.

Q. Pardon me? A. This is the one.

Q. This is the one? A. That's right.

Q. Then, in 1953, you didn't have any, this is the second one in connection with a criminal offense, is that correct? A. That's right.

186 Q. All right. Now, let me ask you this, Mr. Perry. Are you the same William Louis Perry that was convicted of unauthorized use of an automobile on February 16, 1951, here in the District of Columbia? A. Yes.

Q. Now, that was in connection with an offense that occurred on August 1, 1950, isn't that right? A. I don't quite follow you on that.

Q. You were sentenced in that case to six months to eighteen months, isn't that correct? A. Yes.

Q. And at the time that you were sentenced in that case, you were also sentenced to six to eighteen months in connection with another offense, interstate transportation of a stolen motor vehicle, and that was the sentence imposed on February 16, 1951? A. Yes, I guess so.

Q. You got two sentences to run concurrently, or two separate offenses at that time? A. Yes.

Q. Then, September 28, 1952, you were charged with unauthorized use and convicted on November 10, 1952, here in the District of Columbia, is that correct?

187 Will it help if I tell you you were sentenced February 6, 1953? A. Yes, that is the one that it occurred on.

Q. That is the one you told us about, that you had a blackout in connection with that one? A. That's right.

Q. Did you have any blackout in connection with the others? A. No.

* * *

189 Q. Not that you know. Now, all told, I believe you told us that you had five of these blackouts, is that correct? A. That's right.

Q. And the first one started when? A. After I come out of the service or before, or during the time of the accident, are you counting that one, too; that, too, as one of them?

Q. I am asking when you had the first one. A. I want to know whether you are counting that accident as one of them.

Q. I am not counting anything, I want to know when you had your first blackout. A. Would that be considered the accident or the explosion?

THE COURT: When is the first time, tell whether it was in connection with the accident or not.

THE WITNESS: That is the first one I had that I know of.

BY MR. HANNON:

Q. In connection with the automobile accident? A. No, in connection with the explosion.

Q. And that is the one where you say it was your understanding that you were unconscious for three days? A. I didn't say that I was unconscious for three days.

190 Q. What was it you did say? A. I said I was told that I was unconscious part of the time, I didn't state the rest of it.

Q. What were you told about the remainder of the time, anything? A. That I was wandering around in a daze for the next couple days.

Q. Do you have any recollection of it? A. No, not any at all.

Q. Now, did you sustain a head injury at the time of the explosion? A. When I was examined after getting back to the base, I did not have no concussion, that is for sure.

Q. That is for sure, the doctor examined you? A. Yes, they did.

Q. No concussion? A. That is what they said.

Q. No head injury? A. That's right.

Q. Then you were involved in an automobile accident in 1943, I think you told us? A. No, 1949, I told you.

Q. Excuse me. And you went to the hospital at that time?

A. Yes, I did.

Q. Did you sustain any head injuries at that time?

191 A. I had the back of my head when I was thrown out of the car, that was part, but as far as medical treatment, I didn't get any.

Q. Are you saying, sir, that the back of your head was hurt? A. Yes.

Q. And you went to the hospital, is that correct? A. That's correct.

Q. But you didn't receive any medical treatment? A. That's true.

Q. Did you ever receive any medical treatment after that accident? A. No.

Q. You never had your skull x-rayed? A. Oh, yes, I have had my head x-rayed.

Q. You had your head x-rayed? A. Yes.

Q. After the accident? A. No -- Yes, at D. C. General they x-rayed it.

Q. Well, prior to D. C. General? A. St. Elizabeth's.

Q. Well, D. C. General was before St. Elizabeth's? A. That's right.

Q. And down at D. C. General Hospital, did they x-ray your skull there? A. Yes, they did.

192 Q. Hd it ever been x-rayed before that? A. No.

Q. Now, when you got out of the military, what branch of the service were you in? A. The Navy, seamen's branch, the Navy.

Q. You were in the Navy? A. That's right.

Q. When you got out, what kind of discharge did you get? A. Under honorable conditions.

Q. Are you drawing any compensation for any disability that was sustained to your head while in service? A. No, I am not.

Q. All right. Now, you had a blackout at the time of the ammunition explosion in 1942 and you had another one shortly after the automobile accident, is that the time you told us the second one occurred?

A. Straighten that out for me, will you please?

Q. No, you help me, you are the one who testified. You had the first one in 1942, didn't you? A. No, I did not make that statement.

Q. What statement did you make? A. The first one was in 1945.

Q. Was that the ammunition explosion? A. That's right.

193 Q. All right, 1945. When was the second one? A. The second one was in June of 1947, after my discharge.

Q. June 1947. Now, when did you have that automobile accident? A. Thanksgiving eve night, 1947 -- 1949, rather.

Q. The accident was in November 1949? A. That's right.

Q. Now, I may be wrong, but didn''t you tell your counsel when he questioned you, that the second blackout that you had was about a month after the automobile accident? A. That's right.

Q. Well, now, when was the second one, was it in June 1947 or was it a month after the accident in 1949? A. I was wrong then, it was the third time that it happened.

Q. Pardon me? A. That was the third one.

Q. Which was the third one? A. After the automobile accident.

Q. When was the second one? A. June 1947.

Q. What did that occur in connection with? A. I was leaving the house going in town, and I don't remember transferring off of the buses but I was on a different bus and I wind up at 16th and I, how I got there, I don't know.

194 Q. Now, in June 1947, the episode that you are telling us about now, when did that occur, what was that about again, you got on a bus where? A. Got on the bus about a block and a half from my house where I was living.

Q. There's no mistaking this was in June 1947, is that right? A. That's right.

Q. All right. What happened after you got on the bus? A. I got on the bus and sit down and started, the bus taken me in town.

Q. What happened? A. I don't know, just riding along, what

happened after that I don't know.

Q. Where did you get off the bus? A. I don't know. I got off one bus at 16th and I, but it wasn't the bus that I left on.

Q. All right. How many of these blackouts did you have on buses? A. That's the first one, I guess.

Q. Pardon me? A. That's the first one.

Q. Just one? A. On that particular bus, yes.

Q. Pardon me? A. On that bus, yes, at that time.

195 Q. I didn't ask you on that bus, I asked you how many times that you had blackouts while you were riding buses? A. Once.

Q. Once? A. Yes, that one time.

Q. Just the one you told us about, is that correct? A. That's right.

Q. I don't hear you very well. A. That's right.

Q. Thank you. Now, that was in June 1947, is that right? A. That's right.

Q. Didn't you tell your attorney, when you told him about that, that this was three or four months before you took this automobile involved in this case? A. Took what automobile?

Q. You told your attorney, in response to his question, that this bus episode happened three or four months before this one that got you involved in this case. A. I am sorry, you must have misunderstood me.

Q. You didn't say that? You didn't say that it occurred three or four months before this February 12, 1957, date? A. I did not.

Q. You didn't say it occurred early in the fall, when he asked you when it was? A. That's altogether a different one that you are

196 speaking of at the present moment.

Q. All right, tell us about the one that you said occurred early in the fall, three or four months before February, 1957, the date of this offense? A. I left the house on Gulf Place --

Q. Pardon me? A. I left the house and -- let's see, I left the house and started walking, wound up, I didn't know where I was at,

maybe fifteen or twenty blocks from home, I guess.

Q. You wound up walking how many blocks from home? A. Fifteen or twenty blocks, I guess.

Q. Is this the same episode of blackout that you told your attorney when he asked you on direct examination, about three or four months before February 12, 1957? A. You got me confused now, I don't know which one.

Q. I am not trying to confuse you. A. Well, you have me, anyway. Repeat your question again, please.

MR. HANNON: Read the question.

(The question was read.)

THE WITNESS: I had two different spells in different places.

THE COURT: Talk a little louder.

THE WITNESS: I had them in different places, I have the

197 times mixed up.

BY MR. HANNON:

Q. When did the bus blackout happen? A. The bus blackout happened to be, put them in the right places, the bus episode happened about three or four months before this, that is the one, and 1947 was the one when I walked away from the house.

Q. You have got it straight now, is that correct? A. Yes.

Q. And there is no doubt in your mind now about it, is that right? A. That's right.

Q. All right. Now, tell us about the fourth one, sir. A. That is the one that happened, I did it three years ago.

Q. That would be in 1953, is that right? A. Yes.

Q. You remember the name of the police officer in that case? A. No, I don't.

Q. You don't remember anything about that case, is that right? Except that you woke up in jail in the morning, is that what you told us? A. Yes.

Q. Pardon me? A. That's right.

198 Q. Now, let me ask you this, do you know a girl named Sophie

Glenn? A. At that time, yes.

198 Q. And at the time that you were arrested in this 1953 case, wasn't she with you? A. Yes.

Q. She was with you? A. Yes.

Q. Then you do remember the 1953 case? A. After you telling me about it, yes.

Q. You remember that she was with you? A. Yes.

Q. Then you didn't suffer amnesia at that time? A. (No response)

Q. Let me ask you this --

MR. ZITOMER: Just a moment, did he answer the last question?

THE COURT: I didn't understand whether it was a question or whether he didn't answer; I didn't hear any answer, no.

MR. ZITOMER: If that is a question, I think the witness ought to answer it.

THE COURT: Do you understand the question now?

THE WITNESS: No, I don't.

THE COURT: He asked you about this girl who you said was

199 with you when you were arrested and then counsel said, "Then you did not have amnesia at that time," which I take it to mean a question that if you remember the girl being with you at that time, did you then have amnesia or blackout or whatever you call it?

THE WITNESS: Yes, before that I had one.

BY MR. HANNON:

Q. I didn't hear the response? A. Yes, I did have one.

Q. Yes, you did what? A. I did have one.

Q. Yes, you did have amnesia? A. I don't know what you call it.

Q. You had a blackout? A. That's right.

Q. You had no recollection of anything that happened to you that night? A. Well, let's see. No more than what you have mentioned then, being placed in custody of the officers.

Q. Well, you remember Sophie? A. Well, I stated that,

didn't I?

Q. But you remember that she was in the car with you at the time you were arrested? A. Yes.

Q. Then it is not true, as you told your counsel when he
200 questioned you, that you went out and the next thing you woke up in the jail and didn't know how you got there; that is not true, is it? A. When I woke up the next morning, I didn't remember anything about that.

Q. Except Sophie? A. I didn't remember about her until I was told about it later.

Q. That is how you learned about Sophie, is that it? A. Well, yes, in a way.

Q. All right. Let me ask you this, when you have these episodes, you experience a period of blackout, is that right? A. That is true.

Q. What happens after the blackout is over? A. Well, I have dizziness and then I come out of it.

Q. You have dizziness and you see pink spots, I think you said, is that right? A. I have a pink background with white blurred spots.

Q. Besides that, tell us what you do when you come out of it? A. I stand up and usually wonder what has happened, where I have been.

Q. Do you ask anybody? A. If I am with somebody, I generally do.

Q. You generally ask what happened? A. That is right.

201 Q. You ask them, "where am I?" A. If I don't recognize the place.

Q. Do you ask, what have I done or what have I been doing? A. Or have I done anything.

Q. Sure, that is a natural curiosity you want to satisfy, isn't it? A. That's right.

Q. You remember you were in the police station and the first thing you say you remember at Seat Pleasant, the police were trying

to make you sign the statement? A. That is true.

Q. The first thing you remember, you don't know how you got there, do you? A. No, I don't.

Q. Do you remember Mr. Johnson? A. No, I haven't seen that man, the first time I saw him was here in court.

Q. You didn't see him at Seat Pleasant? A. No, I did not.

Q. Do you remember Officer Drass? A. No, I don't.

Q. Do you remember Officer Rabe? A. No, I don't.

202 Q. Did you ask anybody at Seat Pleasant, what am I doing here? A. No, I don't remember whether I did or not.

Q. Did you ask anybody at Seat Pleasant, how did I get here? A. I don't know whether I did or not.

Q. Did you ask anybody at Seat Pleasant, what have I done to get here? A. I don't know whether I did or not.

* * *

REDIRECT EXAMINATION

BY MR. ZITOMER:

Q. We were discussing Sophie a few minutes ago. You were asked whether you remembered Sophie. In response to those questions, you said you were told about Sophie, and I think Mr. Hannon asked you whether or not you remembered being with Sophie and one of your answers was Yes, you remember, or rather, you were told about Sophie, but you said, Yes, in a way. What do you recall of that incident involving Sophie? A. Well, that morning I was told at the precinct that there was a girl involved with me on that charge and I asked them who was she and I was told it was her, and did I know her and I said yes. And actually, what went on after that, I don't remember

203 all of it, but anyway she was told to sign a statement of some type or something, I don't know.

Q. Do you remember actually seeing Sophie, have you ever met the woman? A. I met her that morning.

Q. The morning before or after that offense was committed? A. No.

Q. Apparently when you were arrested, as I understand it, you were in the company of a girl named Sophie. Now, what I want to know is, do you have a recollection of having met Sophie? A. No.

Q. Have you ever known a girl named Sophie? A. Yes.

Q. Was it the same Sophie, as far as you know, which was involved in this offense? A. Yes.

Q. Had you met her before the offense was committed or after the offense was committed? A. I have seen her several times with some other girl friends that I know and just by being around, drinking together, like that. And this specific night that the incident happened, I didn't know where I picked her up or what.

Q. I want to give you an opportunity to explain what you do remember about that offense. Do you want to tell us just what you do
204 remember, when your memory began, when it was lost and when it was picked up again, and what you remember of that offense?
A. Yes.

Q. Will you do that now? A. Sure. I don't know where I picked her up at, but I do know this. After being in prison, they set me down in a chair and there was a woman there, at that specific moment they was talking to me and two or three of them asked me different questions, who they were I don't know, they were all officers, but which ones they were, I don't know.

Q. What was your last memory before that? A. Before that?

Q. Yes, what was the last memory you had immediately before that memory? A. Leaving the Elks Home in Fairmont Heights, Maryland, about 11:30 or 12 o'clock. That is my last memory.

Q. Were you in the company of any person at that time?
A. At that time, no, I was not.

Q. Where were you at that time? A. Well, I left out the Elks Home and walked from 60th Street to Eastern Avenue, down Eastern Avenue to Dixon, in order to catch a streetcar down there to go home.

Q. Then what happened? A. I rode to 49th Street, gotten off

the streetcar there, 49th and Dean Avenue, and started to walk over the hill. I guess I walked probably half way.

205 Q. What time of the night was it? A. It was approximately about 12:15, 12:30, somehwere along in there.

Q. It was after midnight? A. Yes.

Q. Then what happened? A. I was going up the hill, I begin to get short of breath and thought I was tired, getting real tired, then I begin to see this pinkish blur and spots, and boom --

Q. What do you mean by this "boom," what do you mean by that? A. I stopped remembering, everything just went black, I don't know from then on what happened or where I went or what I did until I was at the precinct, and then --

Q. What time was it when you were at the precinct? A. That I couldn't say, either, or exactly what time it was, but it was at night or early in the morning, one, it was dark.

Q. What was the date? A. That I couldn't say.

Q. What day was it that you left the Elks Club and started walking in that direction? A. I don't remember the date.

206 Q. What month was it? A. I don't remember that, either, sir.

Q. Do you remember the year? A. (No response)

Q. Is there any reason why you should have difficulty remembering that year? A. I don't know whether it was 1952 or what it might have been.

Q. But that is the time when you were arrested? A. Yes.

Q. So that there is no doubt about what date it was, I mean there is a record of the day on which it occurred? A. Yes, it is.

Q. Do you have any difficulty with dates, remembering dates? A. Yes, I do at times.

Q. Why? A. I couldn't rightfully say.

Q. How many blackouts have you had since the ammunition explosion, including the ammunition explosion?

MR. HANNON: That is repetitive, Your Honor, he said four or five.

THE COURT: I thought he had said five, altogether.

MR. ZITOMER: This is by way of redirect, Mr. Hannon thought there was some confusion there and I wanted to go back over it.

207 THE COURT: All right. I am going to adjourn in just a minute, there is no chance of finishing up with him right now.

MR. ZITOMER: I think we should be through in a few minutes.

THE COURT: Go ahead.

THE WITNESS: Five.

BY MR. ZITOMER:

Q. Briefly tell us, I understand one of them involved the ammunition explosion? A. That is right.

Q. Another one involved an episode riding on a bus? A. Yes.

Q. Another one involved a charge and Sophie? A. That is right.

Q. What were the other two involved? Can you identify those other two for us, briefly? A. One was June 1947 and this one here.

Q. How can you identify the June 1947, what were you doing at the time the blackout occurred? A. June 1947, let's see, I had left the house, was walking down the street going to a friend's of mine, to visit some friends of mine, and walking along the street and begin to feel dizzy and had headaches and saw this pinkish blur and there were spots, and went off again.

208 Q. When you regained your memory, where were you?

A. About fifteen or twenty blocks from home.

Q. Now, we have four incidents so far, what is the fifth?

A. The fifth incident is this one here.

Q. Do you ever get these dates confused or mixed up in your mind? A. Yes, I have.

Q. Do you know why? A. No, I don't.

Q. Do you have difficulty remembering anything else? A. Yes, I do at times.

Q. Have you got any explanation for that? A. No, I don't.

Q. How is your memory, generally? A. I would say at times

not too good.

Q. You mean at times other than the periods of amnesia?

A. That is right.

* * *

[Filed March 24, 1958]

210 Washington, D. C.,
October 4, 1957.

212 MR. ZITOMER: There are certain portions of the record in this case I would like to introduce in evidence, I don't know if it is necessary.

THE COURT: I don't either. What is it?

MR. ZITOMER: One is the affidavit of poverty of the defendant to show his signature made at a different time, to show the jury the difference in signature in the two papers.

THE COURT: You mean you are challenging the signature of the removal notice?

MR. ZITOMER: No, I am trying to show the reason why this man had difficulty recognizing his signature. I don't doubt it was genuine, but it was made quite differently, in a different hand; no doubt written by the same person, though.

213 THE COURT: To indicate he wasn't himself at that time:

MR. ZITOMER: And also to indicate when he had difficulty recognizing his signature at the time, that he had some reason for it, that he wasn't just trying to avoid the question.

THE COURT: All right, you may put it in.

MR. ZITOMER: I would also like to introduce the orders of the Court, directing the doctors at the hospitals to make their various reports, because the question arose under cross-examination of Dr. Schultz, as to a certain apparent discrepancy in his testimony. Dr. Schultz indicated in his answer that he was merely replying to the order of the Court. I wanted the jury to see the exact terms of the order that the doctor was replying to, so they might understand what might be an apparent inconsistency.

THE COURT: Well, if you think that will clarify anything,

I don't see any objection to it being brought to the attention of the jury. I don't think it has to be filed as an exhibit in the case.

* * *

WILLIAM L. PERRY

resumed the stand and testified further as follows:

RECROSS-EXAMINATION

214 BY MR. HANNON:

Q. Mr. Perry, I believe that you told your counsel, sir, that at the time of your arrest in connection with the case in which you were sentenced in February, 1953, that all you know about it was that you went out and you wound up in jail the next morning and had no idea how you got there, is that correct? A. Yes, I did.

Q. And you recall I asked you about a Sophie Glenn? A. Yes.

Q. Whether she was with you and I believe you testified, did you not, that at the time you were arrested, she was with you. Is that correct? A. I testified that I didn't know for sure whether she was with me or not, until I was told.

Q. And the first time you knew anything about it was the next morning when you were told that she was with you, is that correct? A. That is right.

Q. And in response to that, as well, I believe you told your counsel that you didn't know Sophie Glenn, that you had just picked her up; is that correct? A. No, I don't think I said that I didn't know her. I know of her.

Q. Didn't you say that you had picked her up that night or that day?

215 A. No, I did not.

Q. Tell us what you said. A. I told you that I didn't know whether I had picked her up that specific night.

Q. Pardon me? A. I told you that I didn't know where that I had picked her up that night.

Q. You didn't know where you had picked her up? A. Yes, or when.

Q. You didn't say you had just picked her up that day? A. No,

I didn't.

Q. You didn't say that, prior to that, you didn't know her? A. No.

Q. Well, prior to that time, did you know her? A. Not that you would say I knew her, I knew of her.

Q. You knew of her? A. Yes.

Q. But that is about it? A. That is right.

Q. You remember the officer that arrested you at that time? A. No, I don't.

Q. You don't remember him? A. No.

216 Q. Do you remember what you told him? A. No, I don't.

Q. You remember what you said about the automobile? A. No, I don't.

Q. Then you had no recollection other than the fact that you woke up in jail the next morning? A. And what I was told.

Q. And what you were told.

MR. HANNON: That is all the questions I have, Your Honor.

THE COURT: Any redirect?

MR. ZITOMER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. ZITOMER:

Q. Mr. Perry, yesterday you seemed to have some difficulty when Mr. Hannon was firing questions at you. Is there any explanation you want to make to this jury as to why you appeared to be having such difficulty? A. Yes, I would like to.

Q. You go ahead and make whatever explanation you care to. A. Yesterday, when he was asking me questions, it seems as though that I was tight inside and was given the impression that someone was trying to take advantage of me.

Q. Why did you get that impression, do you know? A. From the way he was speaking and the way that he was asking questions, it

217 was hard for me to grasp exactly what he really meant and by him twisting me around, I would have to try to untwist him in order to try

to answer correctly, and I was just upset and trying to fight against the pressure that was with me so that I could answer the questions as best I could, and suffering from headaches during the time anyhow.

Q. What was the reason for this pressure that you just described? A. Oh, being tensed?

Q. Yes, you indicated you were tense and to some extent confused and under some pressure.

MR. HANNON: I think he has already answered, Your Honor, I think he said it was me.

THE COURT: I think he has, too, I don't quite understand your question.

MR. ZITOMER: I have no further questions.

RECROSS-EXAMINATION

BY MR. HANNON:

Q. When you went back on the stand yesterday, Mr. Perry, and you were holding your head and you remember I asked you whether you were feeling well or not? A. That is true.

Q. What did you tell me? A. I told you to go ahead.

218 MR. HANNON: That is all.

THE WITNESS: The reason I told you that because I figured I might be able to stand it.

* * *

THE COURT: Has the defense rested its case?

MR. ZITOMER: Yes, Your Honor, with the material in the record that we indicated.

THE COURT: All right.

* * *

SOPHIE GLENN

* * *

DIRECT EXAMINATION

BY MR. HANNON:

* * *

Q. Now, Sophie, do you know William L. Perry? A. Yes.

Q. Do you see him here this morning? A. Yes.

219 Q. Where is he, would you point him out, please? A. Right there.

Q. The man in the grey jacket? A. Yes.

Q. All right. Now, I direct your attention to the date of September 27, 1952, and I will ask you whether you were with him, William L. Perry, on that date? A. Yes.

* * *

Q. Now, would you tell us whether or not he was arrested on that day? A. Yes, he was.

Q. And at the time that he was arrested, were you with him? A. Yes, I was.

Q. And at the time that he was arrested, where were you and he? A. Minnesota Avenue and Meade Street, N. E.

Q. Do you know the officer that arrested you? A. Yes.

220 Q. Do you know his name? A. No, I don't know his name.

Q. Did you see him this morning? A. Yes.

Q. Where is he now, do you know? A. In the hall.

Q. He is in the hallway outside the court, is that correct? A. Yes.

Q. Now, at the time that you were arrested, were you riding in an automobile? A. Yes, I was.

Q. Do you remember what kind of car it was? A. It was grey, I don't know what the make.

Q. You have to keep your voice up, if you will, please. Who was driving the automobile? A. Willie Perry.

Q. William Perry? A. Yes.

Q. Where were you and he going at that time? A. He was carrying me home.

Q. He was taking you home? A. Yes.

Q. What time of day was it? A. It was in the morning but I don't recall the exact time.

221 Q. I can't hear you. A. It was in the morning but I don't

recall the exact time.

* * *

222 Q. I asked you, had you ever ridden in that automobile prior to the time that Perry was arrested? A. Yes, I have.

Q. When was that? A. The Saturday night and the week before.

Q. The Saturday night before he was arrested? A. Yes.

Q. And a week before he was arrested? A. Yes.

Q. At those two times, who was driving the car? A. William Perry.

Q. The same William Perry? A. Yes.

Q. How long had you known Perry at the time, Miss Glenn? A. Well, I had known him for quite awhile, but I had just started going around with him.

Q. You had just started going around with him? A. Yes.

Q. You were dating him? A. Yes.

Q. How many times had you gone out with him? A. Oh, about six or seven.

Q. Six or seven times. Did he ever tell you anything about this
223 automobile that he was arrested in? A. He told me it was his uncle's.

* * *

231 HORACE M. ADAMS

* * *

DIRECT EXAMINATION

BY MR. HANNON:

* * *

Q. Directing your attention to the date of September 27, 1952, I ask you what your assignment was on that date? A. I was assigned to No. 14 Precinct, Scout 143.

Q. And during the course of your assignment on that date, had you received information in the course of your duties regarding an
232 automobile, 1941 Buick sedan, that had been reported missing from in front of 5009 Hunt Street, N. E., Washington, D. C.?

A. Yes, sir.

Q. And during that day, sir, did you have occasion to see that automobile? A. Yes, sir, I did.

Q. Where was it that you saw it, if you remember?
A. Minnesota Avenue, I saw it at 49th and Meade Streets, proceeding south.

* * *

Q. What did you do then? A. I observed the automobile turn west into Meade Street. I proceeded to make a left, following the automobile. I finally got it stopped at Minnesota Avenue and Meade. He made a right turn, that would be going south into Minnesota Avenue, it is a dead end.

Q. Do you remember who was in the car at the time you stopped it? A. Yes, sir, a man by the name of Perry.

Q. Was there anybody else? A. A woman, yes, sir.

Q. Do you know her name? A. Sophie Glenn.

233 Q. Is that the same woman that you saw in my office this morning? A. Yes, sir.

Q. And the same woman that just left this witness stand, is that correct? A. Yes, sir.

Q. All right. This man Perry that you named, you see him here this morning? A. Yes, sir.

Q. Where is he, please? A. Sitting there.

Q. Which one of the three men? A. The colored gentleman.

Q. Did you talk to Perry about this automobile, sir? A. Yes, sir, I did.

Q. What, if anything, did he have to say? A. I asked the defendant why was he operating this particular automobile and he said that Leroy loaned it to him. I also asked him who Leroy was, he said it was a friend. I tried to ascertain this Leroy's last name and address, and he said he didn't know.

Q. What did you do then, sir? A. I placed the defendant under arrest and attempted to start the automobile and I couldn't get it started,

so Mr. Perry volunteered his services, and there wasn't any keys in the automobile.

234 Q. No keys in the ignition? A. No, sir.

Q. All right. A. He reached under the dash, manipulated some switch underneath there and adjusted the accelerator, something out of whack, and it started up right away with no trouble, and he asked me, "See how easy it was to start it?"

Q. At any time did he tell you who Sophie Glenn was, sir?

A. He said it was his girl friend.

* * *

CROSS-EXAMINATION

BY MR. ZITOMER:

* * *

236 Q. Just what did the accused say to you at that time, at the time of his arrest? A. What do you mean, his first statement?

Q. Yes. A. Asked me why I stopped him and what he had done wrong.

MR. HANNON: I can't hear you, keep your voice up.

THE WITNESS: He asked me why I stopped him and what he had done wrong.

BY MR. ZITOMER:

Q. Did he say that he recalled taking the car? A. He said the car was loaned to him.

Q. Did he say when? A. That morning.

Q. He didn't say, then -- he indicated he had the car for the first time that day? A. Yes, sir.

Q. Did you ever locate this man Leroy or make an attempt?

A. Attempted, yes.

Q. You were unable to? A. Unable to, the information he gave me didn't have anything to go on.

Q. Had you ever seen him drive the car before that day?

A. No, sir.

HENRY C. ROBERTS

238 called as a witness in rebuttal, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. HANNON:

Q. Would you again tell us your name? A. Henry C. Roberts.

Q. Mr. Roberts, after Perry had been apprehended by you, did you go to Seat Pleasant Precinct? A. That is correct.

Q. And who was there, was Perry there? A. That is correct.

Q. And how long, sir,were you there? A. Oh, I estimate around half an hour, three-quarters of an hour, somewhere around that vicinity.

Q. While you were there, sir, state whether or not you saw Perry sign any form of a statement? A. I did.

Q. Now, would you tell us his attitude towards you before he signed the statement?

* * *

239 THE WITNESS: While in the back of the car, Mr. Perry stated that regardless of the time he received, he would get me.

BY MR. HANNON:

Q. He was going to get you? A. He was going to get me.

Q. You went to the Seat Pleasant Precinct? A. Yes.

Q. What, if anything, did he say or do while at Seat Pleasant Precinct, so far as you are concerned? A. He signed the paper and turned around and looked and said, "I am going to get you," kept repeating, "I am going to get you."

Q. Tell us how many times, before he signed the statement, did he make such a statement to you that he would get you or statements to that effect? A. Well, I guess in the car, I am giving you a rough estimate, maybe ten, eleven times.

Q. After he signed the statement, sir, about how many times? A. I guess about five.

240 Q. About five times. Now, while you were at Seat Pleasant

station, sir, did you at any time hear Perry ask, "Where am I?"
A. No, he did not.

Q. "How did I get here?" A. No, he didn't.

Q. "What am I doing here?" A. No, he didn't.

Q. "What has happened to me?" A. No.

Q. All right. Now, would you describe Perry's appearance at the time that you apprehended him and at the time that you saw him at the precinct? A. Well, at the time I apprehended Mr. Perry, he was without shoes, he lost his shoes in the mud somewhere.

* * *

241 Q. And his appearance, sir? A. I think he had a leather jacket and ordinary dress for February weather.

Q. How about his personal expression? A. He was very angry and sort of peeved, for the reason that I caught him.

Q. Did you have occasion to look at his eyes at any time?
A. Yes, I looked at him.

Q. How about his eyes, was there any expression in his eyes?
A. Just evilness.

Q. Pardon me? A. He looked mean.

Q. Other than that, were his eyes clear or dazed? A. I couldn't hardly tell, only at times when I would flash the flashlight on him.

Q. How about at the precinct? A. Normal.

242 Q. His eyes were normal? A. Regular mean looking, that is correct.

Q. How about his speech at the precinct? A. It was normal.

Q. Was it coherent? A. Yes, that is correct.

Q. Did he mutter? A. I didn't hear him muttering.

Q. You could understand what he was saying? A. Yes, sir, for a song he started singing, that's all, started humming something.

Q. What was his appearance other than the fact you say he appeared angry at you, but in other respects, what was his over-all appearance? A. To me he seemed just evilness and being caught and taken to the precinct, that's all.

Q. He was upset about that? A. That is all.

Q. But in other respects, was his appearance normal or otherwise? A. That is correct.

Q. Which? A. It was normal.

* * *

247 JOHN E. DRASS

* * *

DIRECT EXAMINATION

BY MR. HANNON:

* * *

Q. Did you have occasion to go to the Seat Pleasant Police Precinct on February 12, 1957? A. I did, sir.

Q. Did you see one William L. Perry there? A. Yes, sir.

Q. Do you see him in court this morning? A. Yes, sir.

248 Q. Where is he, please? A. He is the defendant sitting over there.

Q. Which of the three gentlemen? A. The one with the light blue jacket on.

Q. Now, how long were you at Seat Pleasant with Perry? A. I'd say about half an hour, forty-five minutes at the most.

Q. Then there came a time you left? A. Yes, sir.

Q. Where did you go? A. 14th Precinct, in Washington.

Q. Who was with you? A. The defendant, my partner, Officer Rabe.

Q. How long have you been a police officer? A. Four and a half years.

Q. Would you relate to His Honor and the jury the demeanor, attitude and appearance of Perry in the time that he was in your presence and in your custody? A. Well, when we got to Prince Georges County Police Station, the defendant was already there, along with the complainant, Mr. Roberts, and several Prince Georges County policemen. And we walked into the room, the defendant was sitting in a chair and he looked very normal except that he didn't have any shoes

on. However, I think I remember, I think he had one shoe in his hand or sitting beside him, that was full of mud. And we began to interrogate the defendant, asking him various questions about the truck.

249 Q. What did you ask him and what did he say? A. We asked him why he had taken the truck and he told us he was joyriding. We asked him if he wanted to go back into Washington with us. He said it didn't make any difference to him, at which time we drew up the waiver of extradition which Mr. Perry signed, and Officer Rabe signed as a witness. And during the entire conversation we were having with Mr. Perry, he would stop every so often right in the middle of answering a question or talking to us and turn to the complainant, Mr. Roberts and his brother, and said, "If they send me up for forty years, no matter how long they send me up, I am going to get you when I get out."

Q. How often, sir, did he do this? A. Quite a few times, I don't know the exact number.

Q. Did he sign a paper in your presence? A. Yes, sir, he did.

Q. Could you tell us, sir, whether he made these statements to Mr. Roberts before and after signing the statement, sir? A. Both, before he signed it and after.

So, after he had signed the paper, about ten minutes later, we took him out to the scout car, our scout car, and transported him back to No. 14. On the way into the station, he said, "You fellows are making a mountain out of a molehill, you are trying to make a federal

250 case out of this, just somebody doing a little joyriding." But he said, "I don't mind, I will take what is coming to me and I am still going to get those guys when I get out." He kept repeating that statement several times, going to the station.

Q. How about his speech? A. Very coherent.

Q. Did you have occasion to look in his eyes? A. Yes, sir.

Q. Anything unusual about the appearance of his eyes? A. No.

Q. Anything unusual about his appearance? A. No, just had on dirty clothes, they were, well, I guess you could call them clothes that you would work in or something of that nature.

Q. Did you at any time hear him make any complaints about dizziness? A. No, sir.

Q. Headaches? A. No, sir.

Q. Any sickness at all? A. No, sir.

Q. Did he at any time ask you or anybody else at that Seat Pleasant Precinct, where he was? A. No, sir.

251 Q. How he got there? A. No, sir.

Q. What had happened to him? A. No, sir.

* * *

ROBERT L. RABE

* * *

DIRECT EXAMINATION

BY MR. HANNON:

252 Q. For the record, again tell us your name. A. Private Robert L. Rabe.

Q. Earlier you testified that you were at Seat Pleasant Precinct in Maryland with Defendant Perry on February 12, 1957? A. I did.

Q. While you were there, did you at any time hear this man complain about dizziness? A. No, sir.

Q. Spots before his eyes? A. No, sir.

Q. Headaches? A. No, sir.

Q. Any sickness whatsoever? A. No, sir.

Q. Did he at any time ask you or anybody else where he was? A. No, sir.

Q. How he had gotten where he was? A. No, sir.

Q. What he had been doing? A. No, sir.

Q. What had happened to him? A. No, sir.

Q. Why he was in the presence of the police? A. No, sir.

253 Q. All right. Now, while he was there, sir, you heard certain conversation that he engaged in? A. Yes, sir.

Q. Would you tell us how his speech was? A. He was coherent, you could understand him very well.

Q. Did he ramble or rave about anything? A. No, sir.

Q. Did he speak intelligently? A. He did, yes.

Q. Were you able to understand what he was saying? A. Yes, sir.

Q. How about his eyes, did you have occasion to look at his eyes? A. Yes, sir, they looked normal to me.

Q. Was there anything at all that you observed regarding this defendant -- let me ask you this, first, how long, sir, have you been a police officer? A. Six and a half or seven years.

Q. Have you made many or few arrests? A. Many.

Q. Now, I will ask you, did this defendant at the time he was in your custody and under arrest, act any different than the average person that you have arrested in the past? A. No.

* * *

255 MR. HANNON: At this time, the government rests.

* * *

* * *

MR. ZITOMER: Your Honor, I would like to tender in evidence the statement which Mr. Hannon used to cross-examine the defendant, the statement apparently signed by the defendant at the Seat Pleasant station.

256 MR. HANNON: I object to "apparently," Your Honor. The witness said he doesn't know whether he signed it or not.

THE COURT: Well, is it in evidence now?

MR. HANNON: No, Your Honor, it is not in evidence.

THE COURT: Well, he wants to put it in evidence. There is no objection to that, is there?

MR. HANNON: I have no objection.

* * *

DEPUTY CLERK: Defendant's Exhibit No. 1.

(Statement of Defendant was marked Defendant's Exhibit No. 1 and received in evidence.)

* * *

259 MR. ZITOMER: The Court please, the government and the defense have stipulated that Defendant's Exhibit No. 1 in evidence,

described as a waiver of extradition --

259 THE COURT: That is the paper that was signed at the Maryland precinct, is that right?

MR. ZITOMER: Yes, Your Honor. It is stipulated that if the witnesses, Officer Rabe, Officer Anderson and Officer Bishop were present in court, they would testify that this is the signature of William L. Perry and they saw him make that signature.

THE COURT: Yes.

MR. ZITOMER: It is also stipulated that the signature of William L. Perry, purported signature of William L. Perry on the affidavit in support of the application for leave to proceed without prepayment of costs, that appears in the court record, is the signature of William L.

260 Perry, made on the date indicated. Is that agreeable?

MR. HANNON: That is agreeable, yes.

* * *

THE COURT: I think that is correct. I think it perhaps ought to be stated to the jury what your purpose in showing that was. As the Court understands it, it is not to prove it is not the signature of the defendant, but to explain why the defendant did not recognize it as his

261 signature, because of the apparent difference in the way it is written.

MR. ZITOMER: Yes, Your Honor, that is the purpose. We are not denying that Mr. Perry signed it.

* * *

MR. ZITOMER: I wanted to read only portions of the orders of the Court directed to the hospital, with orders to return certain reports.

THE COURT: I will let you do that, provided it is explained to the jury that that matter is brought in by the defendant. It wouldn't be permitted to be brought in by the government unless you had done it.

MR. ZITOMER: Yes, Your Honor.

THE COURT: All right.

MR. ZITOMER: Should I also tell the jury the purpose of this, Your Honor?

THE COURT: Yes.

MR. ZITOMER: The purpose in reading the orders here is to show or explain the testimony of the psychiatrist concerning the replies which they made to the orders of the Court. The psychiatrist, as you may recall, testified their reports were made in response --

MR. HANNON: This is argument, Your Honor.

THE COURT: It is, but I told him he could explain the purpose of
262 submitting these orders.

MR. ZITOMER: This purpose is merely to show what they were replying to when they made their reply.

THE COURT: All right.

MR. ZITOMER: This is an order filed March 18, 1957, signed by Judge Keech:

> Upon consideration of the defendant's motion for mental examination to determine his ability to understand the nature of the proceedings against him, the statement of the government that it does not object to the defendant's motion, and it appearing that the defendant may be presently of unsound mind or mentally incompetent to understand the nature of the proceedings against him or properly to assist in his own defense as defined in Title 24, Section 301, District of Columbia Code, 1951 Edition, as amended August 9, 1955, it is by the Court this 18th day of March, 1957,
>
> Ordered that the defendant be committed to the District of Columbia General Hospital for a period not to exceed sixty (60) days, to be examined by the psychiatric staff of said hospital, the chief psychiatrist of said hospital will, upon completion of said examination, file with this court a written report of the examination, pursuant to Title 24, Section 301, District of Columbia Code, 1951 Edition, as amended August 9, 1955, which report shall
> 263 express the opinion of the staff of the hospital on the present sanity or mental competency of the defendant.

THE COURT: Is that all?

MR. ZITOMER: That is all, Your Honor, that concludes our case.

THE COURT: And you have no further evidence?

MR. HANNON: What about the one at St. Elizabeth's?

MR. ZITOMER: You want that?

MR. HANNON: There is another one ordering him to St. Elizabeth's subsequently, that is in the record and should be made available to the jury; it is sufficient that the jury understands that.

MR. ZITOMER: I have no objection to that.

THE COURT: All right. The purpose of the commitment there was the same, to determine his mental condition with respect to his ability to stand trial.

MR. HANNON: Yes, Your Honor.

* * *

THE COURT: Are there any special instructions I should give to the jury in this case, other than a definition of the offense, the
264 usual charges about presumption of innocence and burden of proof, reasonable doubt, and of course the general charge on weighing the evidence, and so forth, which I always give, and the statement of the defense of unsoundness of mind as pointed out in the Durham case.

MR. HANNON: None by the government.

MR. ZITOMER: I assume that would include the burden of proof is upon the government.

THE COURT: Oh, yes.

MR. ZITOMER: To establish the soundness if the issue is raised, the jury would understand the issue has been raised.

THE COURT: Yes, I will tell them that is an issue in the case and it says here, unless you believe beyond a reasonable doubt either that he was not suffering from a diseased or defective mental condition or that the act was not the product of such abnormality, you must find the accused not guilty by reason of insanity.

MR. ZITOMER: Does Your Honor normally allow counsel to discuss the charge?

THE COURT: Yes, that is why I want to settle them before you begin your argument.

MR. ZITOMER: I don't have anything other than what is in the Durham case.

THE COURT: I take it that, of course, the burden is on the government to prove that the defendant committed this unlawful act,

265 that there really is not a denial on the part of the defendant that he did do these things, so there could hardly be a verdict of not guilty, could there?

MR. ZITOMER: I don't think so. I don't see how.

MR. HANNON: It seems to me it is either not guilty by reason of insanity or guilty, but you never know what a jury is going to do.

MR. ZITOMER: I understand the accused -- he doesn't want to get a verdict.

THE COURT: I think they have got to say -- I think I have got to say to the jury unless they believe he committed the offense and believe that beyond all reasonable doubt, that they can't find him guilty.

MR. HANNON: It is still a jury's prerogative to find him not guilty.

MR. ZITOMER: You could tell the jury the only defense raised has been the defense of --

MR. HANNON: You can argue that.

MR. ZITOMER: -- has been the defense of insanity.

THE COURT: Not guilty by reason of insanity.

MR. HANNON: He can express his opinion to the jury if he desires.

THE COURT: I don't think, perhaps, as a matter of law, I ought to take it from the jury to say that they can't find him not guilty.

266 MR. ZITOMER: I suppose I really should say to the jury that there is no doubt about the commission of the offense. I don't think -- I have to take the position, too, of course, in fairness to the government on that issue, but I don't intend to argue that point.

* * *

267 CHARGE TO THE JURY

THE COURT: Members of the jury, this defendant is charged in

the indictment with what is commonly termed the unauthorized use of an automobile. The indictment states that on or about February 12, 1957, within the District of Columbia, William L. Perry feloniously did take, use, operate and remove the automobile truck of Empire Laundry, Inc., a body corporate, from the lot and did operate and drive said automobile truck for his own profit, use and purpose, without consent of Empire Laundry, Inc., a body corporate, the owner of said automobile truck.

Now, that charge is a charge of a violation of the statute which makes it unlawful to take and use the automobile of another without the consent of the owner or one authorized to give such consent. Now, they are the elements of the charge of the offense that is here charged.

Now, with respect to that, this defendant, as all persons who are charged with crime, is presumed to be innocent. Now, that presumption of innocence is a substantial right, it attaches to the defendant when he is charged with the offense, it remains with him throughout the trial and in your consideration of your verdict and it compels a
268 verdict of not guilty unless and until that presumption of innocence is overcome by evidence which convinces you of his guilt beyond a reasonable doubt.

Now, the burden of proof is upon the government. The defendant does not have to prove himself to be innocent. That presumption of innocence requires, before a verdict of guilty can be found, that every element of the offense be established by evidence which proves that offense beyond a reasonable doubt.

Now, what is meant by this term reasonable doubt? It is not a mere speculative, imaginary or possible doubt, that kind of a doubt might attach to any human transaction. It means a substantial doubt, it means that kind of a doubt which, if you had respecting the affairs of your ordinary life of a more serious nature, would give you pause, make you hesitate and honestly question whether the matter under consideration was true or not true.

Now, if you have that kind of doubt respecting the guilt of this

defendant, or respecting any element necessary to constitute that guilt, then you have a reasonable doubt as that term is used in these instructions, and in that event, you must give the benefit of such doubt to the defendant and find him not guilty.

If, on the other hand, you believe the matter under consideration, the guilt of this defendant, the truth of fact or facts from which you
269 make a reasonable inference of such guilt, I say if you believe such matter under consideration to the point where you have an abiding conviction that it is so, where you believe it to be true to a moral certainty, it can then be said that you believe that particular thing beyond a reasonable doubt as that term is here used.

Now, ordinarily, every person is presumed to be sane. Where however, as here, an issue is raised as to the mental competency of a person charged with an offense, then it is an issue in the case that must be settled by the jury, and it must be determined from the evidence that the person is of sound mind or free from mental disease or defect or, if having such mental disease or defect, the criminal act charged is not the product of such mental disease or defect. I say that issue has been raised in this case and it is an issue that must be determined by you.

If you, the jury, believe beyond a reasonable doubt that the accused was not suffering from a diseased or defective mental condition at the time he committed the criminal act charged, you may find him guilty.

If you believe he was suffering from a diseased or defective mental condition when he committed the act, but believe beyond a reasonable doubt that the act was not the product of such mental abnormality, you may find him guilty. Unless you believe beyond a reasonable doubt either that he was not suffering from a diseased or
270 defective mental condition or that the act was not the product of such abnormality, you must find the defendant not guilty by reason of insanity.

Thus your task would not be completed upon finding, if you did

find, that the accused suffered from a mental disease or defect, he would still be responsible for his unlawful act if there was no casual connection between such mental abnormality and the act. These questions must be determined by you from the facts which you find to be fairly deducible from the testimony and the evidence in the case.

Now, ordinarily, a witness is not permitted to express an opinion. It is usually required that the witness testify only to facts within his knowledge that he has observed and the jury is left to form its own opinion respecting those facts. There is an exception to that rule, however, in the instance of persons who have had special training or experience in fields in which others, laymen, as members of the jury and Judges of the court, do not have such special experience, and in those instances, the witness is permitted, after stating what his experience has been and his training, to express an opinion. That is called expert opinion testimony.

Now, that has been done in this case and I wish to state to you that that is permitted for your guidance and that you are to give such weight, and such weight only, as you believe such opinion evidence is entitled to. It is not binding on you in the sense that you have to accept the opinion of an expert who testifies. It should be considered
271 by you and in the light of all of the evidence in the case, you may let it guide you to such extent as you believe it should. But it is for you and you alone to form the opinion that is controlling in your verdict, getting such help as you believe you should get from such opinion evidence as has been given, in the light of all of the evidence in the case. And you may give it such weight as you think it should have, but you are not required to accept it without weighing and determining what weight you think it should have in the case.

Now, there has been some evidence given in this case touching the previous conviction of this defendant of some offense or offenses. Now, that evidence is not admitted for the purpose of proving or disproving his guilt of the charge here involved. The only purpose that evidence has and can have, is on the credibility of the defendant as a

witness.

Now, it is not the law that because a person has been convicted of some previous offense that he cannot or will not tell the truth; if that was the law, he wouldn't be permitted to testify as a witness. It is the law, however, that a jury is entitled to know, with respect to anyone who testifies as a witness, whether that witness has been previously convicted of a criminal offense. So that the jury may consider that in connection with the many other things which you are to consider in this
272 case on the question of the credibility of the defendant as a witness, that is, to what extent you believe as a witness he is telling the truth.

Now, you are the sole judges of the facts in this case. It is for you to determine what the facts are from the evidence which you have heard, by weighing that evidence, rejecting such part or parts as you do not believe to be true and accurate, and basing your judgment on that which you do believe to be true and accurate.

Now, in doing that, you will take your recollection of the evidence, and where the recollection of counsel for either party or, for that matter, the recollection of the Court, if I have had occasion, as I sometimes do have, to state my recollection for certain purposes that I have to act upon, if your recollection differs from either counsel or the Court, you will now take your own recollection of the evidence and not that of counsel or the Court, where your recollection differs from theirs.

You are the sole judges of the credibility of the witnesses. That means it is for you to determine to what extent you believe the testimony given by the witnesses is true and accurate, or otherwise.

Now, there are certain principles, rules, guides, if you wish to call them that, which are not infallible and you do not have to follow or use them, but which out of long, long years of experience, the law
273 has recognized to be reliable ones and, therefore, you may use them to such extent and such extent only as you believe they are helpful to you in arriving at the truth.

For instance, in weighing the testimony of any witness, you may

consider the interest, if any, which such witness has in the outcome of the trial, and consider and determine whether such interest, if any, has or has not colored or affected the testimony of such witness.

You may consider the opportunity or lack of opportunity of a witness to know and to have observed the matters concerning which that witness has testified. You may consider the capacity and ability of a witness in the circumstances to have accurately observed and to know the matters concerning which that witness has testified. You may consider the capacity and ability of a witness to have accurately recollected and related what the witness did observe and know.

You may consider the appearance and demeanor of a witness on the stand, which is simply another way of saying what all of us do in everyday life, you may consider whether a person testifying looks and acts as if that person is fully, frankly, honestly, accurately relating what that person knows to be so, or the contrary.

If you believe it has been shown that any witness is biased or prejudiced, either for or against either party to this cause, you may
274 consider and determine whether such bias or prejudice, if any, has or has not colored or affected the testimony of such witness.

If you believe it has been shown that any witness has testified falsely concerning any material fact in the case as to which the witness could not reasonably have been honestly mistaken, you have the right to disregard and reject entirely all that that witness has testified to, on the principle that one who testifies falsely concerning one material fact, may be testifying falsely about others or all; or in any event, such a witness is not sufficiently reliable to compel a jury to base its judgment on the testimony of that kind of a witness, which illustrates the wide latitude which the law leaves to your good sound judgment and discretion as to what weight you will give to the testimony of such a witness.

Now, if after weighing all of the evidence in this case and rejecting such part or parts as you do not believe to be true and accurate and basing your judgment on that which you do believe to be true and

accurate, you believe that this defendant is guilty of the offense with which he is here charged and you believe that beyond all reasonable doubt, it would be your duty to find the defendant not guilty and in that event that should be the -- I made a mistake -- if you believe from all the evidence in this case that the defendant is guilty of the offense here
275 charged and you believe that beyond all reasonable doubt, it would be your duty in that event to find the defendant guilty, and in that event that would be the form of your verdict.

If, on the other hand, you do not believe the defendant to be guilty of the offense here charged or if you have a reasonable doubt of his guilt, in that event it would be your duty to find the defendant not guilty of the offense here charged, and in that event that would be the form of your verdict.

If you believe that the defendant did commit the acts here charged but at that time he had a mental defect or disease and that the acts committed by him were the product of such mental defect or disease, then and in that event, it would be your duty to find the defendant not guilty by reason of insanity, and in that event that should be the form of your verdict, and in that event it would be the duty, in the discretion of the Court, to provide that he be sent to a hospital for treatment rather than punished as if guilty otherwise.

Let me repeat what I have said to you in reading from this decision on this question, and that is you must believe, in order to find the defendant guilty, inasmuch as the issue has here been raised that he was not suffering from a mental disease or defect which produced the unlawful acts here complained of, you must believe that he was not suffering from such mental disease or defect or that it was not the
276 product of such mental disease or defect, beyond a reasonable doubt.

Is there any instruction counsel thinks the Court should give that I haven't covered?

MR. ZITOMER: May we approach the bench?

THE COURT: Yes.

(At the bench:)

MR. ZITOMER: ***

I would like, for the record, to make a motion for judgment of acquittal by reason of insanity.

THE COURT: I think it ought to be decided by the jury, so I will deny the motion.

(End of bench conference.)

THE COURT: It has been suggested to me that possibly I did not make it clear, I thought I did, but it is possible that I did not, that when I talk about the mental condition of this accused and what would justify a verdict of not guilty by reason of insanity, I am of course referring to the time at which the unlawful acts are said to have occurred, I am not talking about now, I am not talking about before or
277 after that event, but from the evidence in the case, you will have to resolve the issue as to the mental defect or disease, whether the acts complained of were the product of said mental defect or disease, if any, as of the time named in the indictment, which I believe is February 12, 1957, as distinguished from either his present or his previous condition.

That clears up the point you had in mind?

MR. ZITOMER: Yes, Your Honor.

* * *

278 (The jury retired at 2:45 p.m. to consider its verdict.)

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(Further proceedings on receipt of a note from the jury:)

THE COURT: I have a note from the foreman:

"The jury would like to know why Mr. Perry was sent to St. Elizabeth's for a second mental examination after being examined at D. C. General.

Lee Daub
Foreman"

So far as I recall, there was no evidence in the case on that, was there? I mean, there was evidence of the two examinations, but --

MR. ZITOMER: Your Honor might clarify that, and that is the second order signed, I think by Judge Curran, the order committing him to St. Elizabeth's and Mr. Hannon asked that that be available to the jury. You recall those two orders and I didn't read the second order because it wasn't pertinent, I thought, but Mr. Hannon asked that they be made available, so perhaps if that order were made available --

THE COURT: But he did go to both, didn't he go to D. C. General and later to St. Elizabeth's?

MR. ZITOMER: Yes. What the jury wants to know, I suppose, is why did they send him to the second one after he was examined by the first one.

279 THE COURT: Why did they send him to St. Elizabeth's after D. C. General?

MR. ZITOMER: The second order explains that.

THE COURT: What does it say?

MR. HANNON: "This cause having come on for trial this date and it appearing to the Court that the defendant was examined at the District of Columbia General Hospital and a report from the chief psychiatrist of that institution indicating that complete psychological and psychiatric evaluation reveal him to have brittle control over his primitive emotions, with a future possibility of a mental illness, and because of the defendant's actions and statements when he appeared before the Court prior to trial, and it appearing, therefore, that the defendant may be presently of unsound mind and mentally incompetent so as to be able to understand the proceedings against him or assist in his own defense, it is by the Court this 10th day of so-and-so ordered to go to St. Elizabeth's.

THE COURT: I think the sensible thing to do would be to let the jury see the second order.

MR. HANNON: No objection. Judge Curran looked at this letter and said, "What does this thing mean?" And listened to the defendant say, "I don't remember what happened to me," so he said

send him down to St. E's and have them examine him and that is what occurred.

MR. ZITOMER: That is what happened. The Judge was of the opinion, I remember Judge Curran called us to the bench when the man
280 wanted to plead and after Judge Curran examined the man in open court to determine this amnesia, Judge Curran called us to the bench and said the man may be telling the truth, send him back to St. Elizabeth's in view of this doubtful letter from District General.

THE COURT: What shall I do, just send that order in to them as an answer to this note?

MR. HANNON: Send the order in and ask them to report whether the order answers their question and if it doesn't, we will bring them out and I am sure counsel and I can stipulate something.

THE COURT: Yes.

MR. ZITOMER: It may help them, I don't know that that will answer their question.

THE COURT: I don't, either.

Will you tell the jury that I am sending in this order which I think answers their question, but if they don't understand it as a satisfactory answer, that I will bring them in court and go into the matter further.

DEPUTY MARSHAL: Yes, Your Honor.

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(At 4:05 p.m., the jury was brought into court:)

(Before the jury came in, the following occurred:)

THE COURT: I haven't heard anything further from the jury since
281 we sent them in that order responsive to the inquiry, which evidently satisfied them on this point. But I don't want to keep them here late today, I don't see really what good purpose could be served by it. So I thought I would call them in and tell them that unless they are ready with a verdict or could reach one with a very short further deliberation, that I would excuse them until Monday morning and let them resume their consideration at that time. Is that satisfactory?

MR. ZITOMER: Yes, Your Honor.

MR. HANNON: Yes, Your Honor.

THE COURT: I think that is the best thing to do.

Bring them in and let them take their places in the box.

(The jury was brought into the courtroom.)

THE COURT: Members of the jury, I have called you back in for this reason. I don't want you to be hurried in reaching a verdict, neither do I wish to punish you by keeping you here late in order to reach one. And so unless you are of the view that a verdict could be reached with a very short further deliberation, I thought and counsel agree with me, that I would excuse you until Monday morning and let you then resume consideration of your verdict in the jury room. How many of you feel that that would be a desirable thing to do? Hold up your hands, those of you that think it would be well to excuse you now. (Five hands were raised.)

282 How many of you think that further consideration, short consideration, would result in a verdict? (Four hands.)

Well, you seem to be divided on that point. That looks like it might be a good idea to excuse you. I will excuse you now until 10 o'clock Monday morning at which time you will report to the marshal at the jury room and there resume your consideration of your verdict.

In the meantime, you are to scrupulously observe the instructions I have given you about not discussing the case with anyone, not even among yourselves except when you are gathered together for the purpose of such discussion. And do not let any information about the case or anything that purports to be information about it come to your knowledge or attention in any way, except as it has or does here during the course of the trial.

Observing those instructions, you will now be excused until Monday morning at 10 o'clock.

(Adjourned at 4:20 p.m. until Monday, October 7, 1957, at 10 o'clock a.m.)

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283 MONDAY, OCTOBER 7, 1957

(At 10 o'clock a.m., the jury retired to the jury room to consider their verdict.)

(Further proceedings at 11:45 a.m.:)

THE COURT: I have had a message from the jury:

"Your Honor, after two hours and a half of careful deliberation, we are unable to reach a unanimous decision. The single opposing juror feels that further discussion will be of no avail in assisting him to join us in a unanimous decision. Your advice is requested.

Lee Daub
Foreman"

MR. HANNON: Give them the Allen charge, Your Honor.

THE COURT: I can do that.

MR. HANNON: I think that would be an appropriate thing to do, we don't know which way they are, one way or the other.

THE COURT: Well, I will do that and let them go back for awhile.

MR. HANNON: May I inform Judge Schweinhaut that I will be delayed here for a few minutes?

DEPUTY CLERK: I can call him.

(The jury was returned to the courtroom.)

THE COURT: Members of the jury, I have had a communication from your foreman which indicates that you are not able to reach a verdict. I am not in any way trying to influence any juror to override

284 his convictions, he has a perfect right to have them and to adhere to them.

I do think, however, before I declare a mistrial in this case, I should give you a charge that has been approved by our court on the duty of jurors in undertaking to form their convictions in reaching a conclusion and let you have an opportunity to consider the matter a little further after I have given you this charge. Of course, if you are

then unable to reach a unanimous verdict, you may tell me so and I will respect the difference of opinion that you have and declare a mistrial.

Although the verdict must be the verdict of each individual juror and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case, if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men or women equally honest, equally intelligent with himself. If, upon the other hand, the majority was for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of the judgment which was not concurred in by the majority.

285 While undoubtedly the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by comparison of views and by arguments among the jurors themsleves. It certainly cannot be the law that each juror should not listen with deference to the argument and with a distrust of his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does.

It cannot be that each juror should go to the jury room with a blind determination that the verdict shall represent his opinion of the case at that moment or that he should close his ears to the arguments of men who are equally honest and intelligent as himself.

Now, as I say, that is an instruction with respect to how the jurors should approach the matter of forming their convictions and it is not intended to try to override the convictions of any juror that we have. But I will ask you to go back and deliberate further in the light of this instruction and, after a fair consideration, you may let me know

whether or not you were able to reach a unanimous verdict or you are unable to do so.

286 MR. HANNON: May we approach the bench?

THE COURT: Yes.

(At the bench:)

MR. HANNON: Your Honor, would you also tell the jury that this case has got to be decided by some jury sometime, so if conscientiously they can do it that the responsibility is to do it?

THE COURT: Well, I think I told them that.

MR. HANNON: Well, the conscientious part, I agree, but I don't recall that Your Honor said it has got to be decided by some jury sometime.

THE COURT: I can't tell them that because it might be tried a hundred times and a disagreement reached in each one. I can't tell them that a jury is going to agree.

MR. HANNON: I thought that was an appropriate instruction to go with the Allen charge, some jury has got to decide it some day.

THE COURT: No, as a matter of fact, some jury doesn't have to decide it some day, they can all disagree, as far as the law is concerned. I don't want that to happen and I don't think it will, but I don't think I can tell them that as a matter of law.

MR. HANNON: You can tell them that it is the responsibility of some jury.

THE COURT: It will be submitted to another jury:

287 MR. HANNON: Sometime or other somebody is going to have to decide which way it is going to go.

THE COURT: I am afraid to go any further than I have, this is the language which has been approved.

MR. HANNON: Very well, Your Honor.

(End of bench conference.)

THE COURT: All right, let the jury retire.

(At 11:50 a.m., the jury returned to the jury room.)

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(Further proceedings at 2:10 p.m. at the bench:)

THE COURT: I had something I think I ought to state to counsel. As you know, I ordered the jury to be taken to lunch. After they got them out there, the marshal came to me and said one of the jurors had disappeared. I told him to search for him as well as he could; if he couldn't find him, to go ahead and take the others to lunch, which he couldn't find the 12th juror and he did take the others to lunch. Shortly after I got back from lunch, this missing juror was here and I had the marshal bring him in to me and I asked him why he had disappeared from the other jurors and he said he had gone into the bathroom in the jury room to wash up and when he came out, all the jurors were gone. He had heard the marshal say that they were going to have lunch and he assumed that they were just going to have a recess for lunch like they have been having all the time that they weren't going to be taken to lunch
288 together and the lunch paid for by the government, so he went to lunch and he professed to be very sorry about the thing.

I told him to go on back to the jury room and that is where he is now. I fon't know which juror he is, I know the man but I don't know how he stands on this case. I frankly don't think it amounts to anything.

MR. HANNON: No, I don't.

THE COURT: I think I ought to reveal that to counsel.

MR. HANNON: They haven't reached a verdict.

THE COURT: They may not be able to reach one anyway.

MR. HANNON: If they don't, it is no problem.

THE COURT: It is no problem at all.

MR. HANNON: If they do, I think Your Honor might interrogate the juror on the record regarding whether he spoke to anybody about the case during the luncheon and if he says no, I see no problem.

THE COURT: Is that satisfactory?

MR. ZITOMER: Yes, that is satisfactory. Would Your Honor discharge the jury and declare a mistrial in this case?

THE COURT: I am if they don't get together pretty soon.

MR. ZITOMER: Do you have any idea?

THE COURT: How long?

MR. ZITOMER: Yes, sir.

THE COURT: I thought I would leave that up to them to let me know if they can't reach a verdict.

289 MR. ZITOMER: I was hoping we would get through here sometime before the day is over.

THE COURT: We are going to get through with it before the day is over. If they haven't reached a verdict by 4 o'clock, for instance, I will call them in and declare a mistrial.

MR. ZITOMER: I was just hoping that Your Honor would call them in at this point and either declare a mistrial or get a verdict.

THE COURT: I think I ought to give them a little further time, they have had time now for lunch, let's wait a little while longer.

MR. ZITOMER: All right.

(End of bench conference.)

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(At 2:45 p.m., the jury announced they had a verdict:)

THE COURT: I understand the jury is ready with a verdict in the William L. Perry case. Are you ready to receive the verdict?

MR. ZITOMER: Yes, if Your Honor please.

MR. HANNON: The government is ready, Your Honor.

THE COURT: Let the jury come in and take a position before the box.

MR. HANNON: Will Your Honor inquire from that juror before the verdict is received?

290 THE COURT: You would rather I'd do it before I receive the verdict?

MR. HANNON: I think so.

MR. ZITOMER: It doesn't make any difference. I thought Your Honor meant to inquire after the verdict was received.

THE COURT: You would rather I'd do it before the verdict?

MR. HANNON: I will defer to Your Honor's wishes in the matter.

THE COURT: Let me take the verdict and then I will inquire.

MR. HANNON: Very well.

(The jury was brought into the courtroom.)

THE COURT: All right, Mr. Clerk.

DEPUTY CLERK: You are the foreman?

FOREMAN DAUB: Yes, sir.

DEPUTY CLERK: Mr. Foreman, has the jury agreed upon a verdict?

FOREMAN DAUB: Yes, sir, we have.

DEPUTY CLERK: What say you as to the defendant, William L. Perry?

FOREMAN DAUB: The jury finds him guilty as charged.

DEPUTY CLERK: Members of the jury, your foreman says you find the defendant, William L. Perry, guilty as charged and that is your verdict, so say you each and all?

291 (The jury responded affirmatively.)

THE COURT: Now, let me make inquiry of the juror who got separated from the others and did not go to lunch. You are the one, aren't you? What is your name?

JUROR ROANE: Walter L. Roane.

THE COURT: Now, as I understood it, you got separated from the jury because you were in the toilet in the jury room while certain things were said to the jury, but you had heard the marshal say something about going to lunch and then when you came out, you didn't see anybody there and you thought they had all gone to lunch as they usually do, rather than being taken to lunch by the marshal, together, is that correct?

JUROR ROANE: That is correct, sir.

THE COURT: Well, now, tell me this, during that recess did you talk with anyone about this case?

JUROR ROANE: No, sir.

THE COURT: Did anyone talk to you about the case?

JUROR ROANE: No, sir.

THE COURT: Are there any other inquiries that counsel think the Court should make?

MR. ZITOMER: No, Your Honor.

MR. HANNON: None by the government, Your Honor.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14356

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WILLIAM L. PERRY, APPELLANT

v.

UNITED STATES OF AMERICA; APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OLIVER GASCH,
United States Attorney.

CARL W. BELCHER,
JOSEPH M. HANNON,
JACK MARSHALL STARK,
Assistant United States Attorneys.

United States Court of Appeals
For the
District of Columbia Circuit
FILED JUN - 6 1958
Joseph W. Stewart
CLERK

STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellee the following question is presented:

Where major conflict exists in expert testimony, and where there is lay testimony of sanity, is not the evidence sufficient to require submission of the issue to the jury?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14356

WILLIAM L. PERRY, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant was indicted for the unauthorized use of a truck, the offense occurring on February 12, 1957 (J. A. 1). He was sentenced, upon a verdict of guilty, to imprisonment for one to three years, and this appeal is from the judgment of conviction (J. A. 6).

Mr. Henry C. Roberts, an official of a laundry in the northeast section of the city, testified that about 6:45 P. M. on February twelfth, when it was "near dark," he was in his office when he noticed a small panel-bodied truck, owned by the company, being backed into Minnesota Avenue (J. A. 9, 10, 12, 14). He and his brother pursued the truck, appellant at the wheel, over a circuitous route into Maryland where appellant was captured in woods at the dead end of a street and turned over to Maryland authorities (J. A. 10–11).

Appellant's defense was insanity (Br. 1). Taking the stand he claimed he had amnesia covering the period shortly before the crime until shortly thereafter (J. A. 54). According to appellant he had had amnesia on four other occasions over a

period of twelve years. One of these episodes allegedly occurred in 1952 when appellant blacked out and next found himself in jail charged with the theft of an automobile. He claimed he pleaded guilty to this offense because of advice of counsel. In addition to this conviction appellant admitted convictions in 1951 for unauthorized use and for interstate transportation of a stolen vehicle (J. A. 95). There was no claim to amnesia in connection with these offenses.

Prior to trial, on March 26, 1957, the appellant had been received at D. C. General Hospital upon an order of the District Court that his competency to stand trial be determined (J. A. 77). He remained in this institution until May sixteenth, undergoing examination by the staff of the Psychiatric Service under the general supervision of its chief, Dr. John D. Schultz (J. A. 77–78). On May 7, 1957, he was reported competent to stand trial (J. A. 2–3).

Also prior to trial appellant was received at Saint Elizabeths Hospital on July 1, 1957, where he underwent examination in the West Side Service, under the supervision of Dr. William G. Cushard, in charge (J. A. 25). On August 21, 1957, he was again reported as competent to stand trial (J. A. 4–5).

The defense called both Dr. Cushard and Dr. Schultz (J. A. 41, 47). Dr. Cushard testified that, in addition to constant observation by the staff, appellant had been given a general physical examination and psychological tests (J. A. 25–26). Nothing organically wrong was found. An electroencephalogram test positively excluded organic damage to the brain (J. A. 28). The doctor and his staff unanimously agreed that there was no amnesia because of the total absence of medical conditions with which it is associated (J. A. 22, 23). Dr. Cushard answered no to a defense question whether there was "anything in the history of the case that suggested the possibility of mental illness" (J. A. 33).

In contrast Dr. Schultz diagnosed appellant's condition as dissociative reaction (hysteria) and that appellant was "subject to periods of amnesia" (J. A. 78, 80). In answer to a hypothetical question (J. A. 82–83) the doctor answered that appellant's mental condition "probably" produced the crime (J. A. 90).

In further contrast, Dr. Schultz had ruled out sociopathic personality, which was the affirmative diagnosis of Dr. Cushard (J. A. 84, 42).

As to amnesia, there was lay testimony. Appellant claimed when recovering from blackouts he would orient himself by questioning those around him (J. A. 102). He also claimed to have come to on this occasion in the Maryland police station (J. A. 54). Mr. Roberts, who pursued appellant and the police officers who arrested and interrogated him, testified that no such questions were put to them or in their presence (J. A. 115–119). Far from appearing confused or lost, appellant spoke quickly and coherently (J. A. 119). He told one officer that he was on his way home when he saw the truck and decided to take it to go joyriding (J. A. 21). And on the way back to Washington, he told the officers "you fellows are making a mountain out of a mole hill, you are trying to make a federal case out of this, just somebody doing a little joyriding" (J. A. 118).

It has been seen that appellant claimed amnesia when he committed a similar crime in 1952. In rebuttal the Government called Sophie Glenn, who was in the car with appellant at the time of his 1952 arrest. She testified that she had dated appellant six or seven times before the 1952 incident and that she had driven with him in the same car a week before he was arrested. Appellant had told her that the car belonged to his uncle. On the night of this prior arrest appellant was driving Sophie home after a date (J. A. 111, 112).

STATUTE INVOLVED

Title 22, Section 2204, District of Columbia Code provides:

> *Unauthorized use of vehicles.*—Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not

exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment.

SUMMARY OF ARGUMENT

There was sufficient evidence to warrant submission of appellant's sanity to the jury. The verdict was in accord with the testimony of one of the psychiatrists as corroborated by lay witnesses.

ARGUMENT

I

There was sufficient evidence of sanity to submit to the jury

Appellant's argument (Br. 4–6) is that there was insufficient evidence of sanity at the time of the commission of the crime to warrant submission of that issue to the jury. This conclusion is only made possible by ignoring, as appellant does, the fact that the expert testimony of the two psychiatrists was in essential conflict. As detailed in the counterstatement, Dr. Schultz testified that appellant suffered from dissociative reaction (hysteria) subjecting him to "periods of amnesia" and that this disorder probably produced the crime, assuming hypothetically surrounding circumstances as to which there had been testimony. In direct contrast Dr. Cushard testified there was no suggestion of mental illness and that extensive tests had eliminated the possibility of amnesia. Thus there was a direct conflict of expert testimony in this crucial aspect as well as in other respects noted in the counterstatement.

Even a conflict between unanimous psychiatric testimony and contrary lay testimony may warrant submission of the issue of sanity to a jury. *Bell* v. *United States*, 93 U. S. App. D. C. 173, 210 F. 2d 711 (D. C. Cir. 1953), *cert. denied*, 347 U. S. 956 (1954). For a stronger reason submission is warranted where, as here, the conflict is in the expert testimony itself. Reliance by appellant (Br. 5) on *Douglas* v. *United States*, 99 U. S. App. D. C. 232, 239 F. 2d 52 (D. C. Cir. 1956), is therefore obviously misplaced. Disregard of conflicting expert testimony is clearly within the province of the jury under the *Douglas* case, which only forbids arbitrariness. Further,

in distinguishing the *Holloway* case,[1] the Court in *Douglas* reiterated the principle that a verdict of guilty should not be disturbed merely because contrary to expert psychiatric opinion. Here the jury clearly had the power of choice in the realm of its own peculiar competence—credibility. Its verdict was warranted by Dr. Cushard's testimony as corroborated by lay testimony indicating that appellant feigned amnesia.

As to lay testimony, whose force appellant minimizes (Br. 5), the Court in *Douglas* recognized its worth by remanding for a new trial in which the dearth of lay testimony, *dating before the crime,* might possibly be remedied. Affirmatively in his own defense appellant had here claimed amnesia on a prior occasion when he committed the same crime. This was rebutted by a female friend who had had ample opportunity to observe him and to whom he explained possession of the vehicle long before there was reason to feign amnesia.

Additionally relied on by appellant are *Wright* v. *United States,* 250 F. 2d 4 (D. C. Cir. 1957), and *Fielding* v. *United States,* 251 F. 2d 878 (D. C. Cir. 1957). Like *Douglas,* both are inapposite in that, in contrast to the instant case, the defendants had been found of unsound mind shortly after the crime and had been committed for treatment for long periods before trial. It is therefore submitted that all reasonable minds would not agree that a reasonable doubt was created by the medical testimony and therefore the verdict must stand. *Curley* v. *United States,* 81 U. S. App. D. C. 389, 160 F. 2d 229 (D. C. Cir. 1947).

CONCLUSION

For the foregoing reasons, it is respectively submitted that the judgment below be affirmed.

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[1] *Holloway* v. *United States,* 80 U. S. App. D. C. 3, 148 F. 2d 665 (D. C. Cir. 1945).

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